

## PART 122—AIR COMMERCE REGULATIONS

### Sec.

122.0 Scope

### Subpart A—General Definitions and Provisions

- 122.1 General definitions.
- 122.2 Other Customs laws and regulations.
- 122.3 Availability of forms.
- 122.4 English language required.
- 122.5 Reproduction of Customs forms.

### Subpart B—Classes of Airports

- 122.11 Designation as international airport.
- 122.12 Operation of international airports.
- 122.13 List of international airports.
- 122.14 Landing rights airport.
- 122.15 User fee airports.

### Subpart C—Private Aircraft

- 122.21 Application.
- 122.22 Notice of arrival.
- 122.23 Private aircraft arriving from areas south of the U.S.
- 122.24 Landing requirements.
- 122.25 Exemption from special landing requirements.
- 122.26 Entry and clearance.
- 122.27 Documents required.
- 122.28 Private aircraft taken abroad by U.S. residents.
- 122.29 Arrival fee and overtime services.
- 122.30 Other Customs laws and regulations.

### Subpart D—Landing Requirements

- 122.31 Notice of arrival.
- 122.32 Aircraft required to land.
- 122.33 Place of first landing.
- 122.35 Emergency or forced landing.
- 122.36 Responsibility of aircraft commander.
- 122.37 Precleared aircraft.
- 122.38 Permit and special license to unlade and lade.

### Subpart E—Aircraft Entry and Entry Documents

- 122.41 Aircraft required to enter.
- 122.42 Aircraft entry.
- 122.43 General declaration.
- 122.44 Crew baggage declaration.
- 122.45 Crew list.
- 122.46 Crew purchase list.
- 122.47 Stores list.
- 122.48 Air cargo manifest.
- 122.48a Electronic information for air cargo required in advance of arrival.
- 122.49 Correction of air cargo manifest or air waybill.
- 122.49a Passenger and crew manifests.

122.49b Passenger Name Record (PNR) information.

122.50 General order merchandise.

### Subpart F—International Traffic Permit

- 122.51 Aircraft of domestic origin registered in the U.S.
- 122.52 Aircraft of foreign origin registered in the U.S.
- 122.53 Aircraft of foreign registry chartered or leased to U.S. air carriers.
- 122.54 Aircraft of foreign registry.

### Subpart G—Clearance of Aircraft and Permission to Depart

- 122.61 Aircraft required to clear.
- 122.62 Aircraft not otherwise required to clear.
- 122.63 Scheduled airlines.
- 122.64 Other aircraft.
- 122.65 Failure to depart.
- 122.66 Clearance or permission to depart denied.

### Subpart H—Documents Required for Clearance and Permission to Depart

- 122.71 Aircraft departing with no commercial export cargo.
- 122.72 Aircraft departing with commercial export cargo.
- 122.73 General declaration and air cargo manifest.
- 122.74 Incomplete (pro forma) manifest.
- 122.75 Complete manifest.
- 122.76 Shipper's Export Declarations and inspection certifications.
- 122.77 Clearance certificate.
- 122.78 Entry or withdrawal for exportation or for transportation and exportation.
- 122.79 Shipments to U.S. possessions.
- 122.80 Verification of statement.

### Subpart I—Procedures for Residue Cargo and Stopover Passengers

- 122.81 Application.
- 122.82 Bond requirements.
- 122.83 Forms required.
- 122.84 Intermediate airport.
- 122.85 Final airport.
- 122.86 Substitution of aircraft.
- 122.87 Other requirements.
- 122.88 Aircraft carrying domestic (stopover) passengers.

### Subpart J—Transportation in Bond and Merchandise in Transit

- 122.91 Application.
- 122.92 Procedure at port of origin.
- 122.93 Procedure at destination or exportation airport.
- 122.94 Certificate of lading for exportation.
- 122.95 Other provisions.

## **Bureau of Customs and Border Protection, DHS, Treasury**

## **§ 122.0**

### **Subpart K—Accompanied Baggage in Transit**

- 122.101 Entry of accompanied baggage.
- 122.102 Inspection of baggage in transit.

### **Subpart L—Transit Air Cargo Manifest (TACM) Procedures**

- 122.111 Application.
- 122.112 Definitions.
- 122.113 Form for transit air cargo manifest procedures.
- 122.114 Contents.
- 122.115 Labeling of cargo.
- 122.116 Identification of manifest sheets.
- 122.117 Requirements for transit air cargo transport.
- 122.118 Exportation from port of arrival.
- 122.119 Transportation to another U.S. port.
- 122.120 Transportation to another port for exportation.

### **Subpart M—Aircraft Liquor Kits**

- 122.131 Application.
- 122.132 Sealing of aircraft liquor kits.
- 122.133 Stores list required on arrival.
- 122.134 When airline does not have in-bond liquor storeroom.
- 122.135 When airline has in-bond liquor storeroom.
- 122.136 Outgoing stores list.
- 122.137 Certificate of use.

### **Subpart N—Flights to and From the U.S. Virgin Islands**

- 122.141 Definitions.
- 122.142 Flights between the U.S. Virgin Islands and a foreign area.
- 122.143 Flights from the U.S. to the U.S. Virgin Islands.
- 122.144 Flights from the U.S. Virgin Islands to the U.S.

### **Subpart O—Flights to and From Cuba**

- 122.151 Definitions.
- 122.152 Application.
- 122.153 Limitations on airport of entry or departure.
- 122.154 Notice of arrival.
- 122.155 Document to be presented upon arrival.
- 122.156 Release of passengers.
- 122.157 Documents required for clearance.
- 122.158 Other entry and clearance requirements.

### **Subpart P—Public Aircraft [Reserved]**

### **Subpart Q—Penalties**

- 122.161 In general.
- 122.162 Failure to notify and explain differences in air cargo manifest.

- 122.163 Transit air cargo traveling to U.S. ports.
- 122.164 Transportation to another port for exportation.
- 122.165 Air cabotage.
- 122.166 Arrival, departure, discharge, and documentation.
- 122.167 Aviation smuggling.

### **Subpart R—Air Carrier Smuggling Prevention Program**

- 122.171 Description of program.
- 122.172 Eligibility.
- 122.173 Application procedures.
- 122.174 Operational procedures.
- 122.175 Exemption from penalties.
- 122.176 Removal from ACSPP.

### **Subpart S—Access to Customs Security Areas**

- 122.181 Definition of Customs security area.
- 122.182 Security provisions.
- 122.183 Denial of access.
- 122.184 Change of identification; change in circumstances of employee; additional employer responsibilities.
- 122.185 Report of loss or theft of Customs access seal.
- 122.186 Presentation of Customs access seal by other person.
- 122.187 Revocation or suspension of access.
- 122.188 Issuance of temporary Customs access seal.
- 122.189 Bond liability.

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Section 122.49a also issued under 19 U.S.C. 1431 and 49 U.S.C. 44909(c).

Section 122.49b also issued under 49 U.S.C. 44909(c)(3).

SOURCE: T.D. 88-12, 53 FR 9292, Mar. 22, 1988, unless otherwise noted.

### **§ 122.0 Scope.**

The regulations in this part relate to the entry and clearance of aircraft, and the transportation of persons and cargo by aircraft, and are applicable to all air commerce. They do not apply to Guam, Midway, American Samoa, Wake, Kingman Reef, Johnston Island, and other insular possessions of the U.S. not specified herein. They do apply to the U.S. Virgin Islands as stated in subpart N (§§122.141 through 122.144), and Cuba as stated in subpart O (§§122.151 through 122.158).

**Subpart A—General Definitions and Provisions**

**§ 122.1 General definitions.**

The following definitions apply in this part, unless otherwise stated:

(a) *Aircraft*. An “aircraft” is any device now known, or hereafter invented, used or designed for navigation or flight in the air. It does not include hovercraft.

(b) *Aircraft commander*. An “aircraft commander” is any person serving on an aircraft who is in charge or has command of its operation and navigation.

(c) *Agent*. An “agent” is any person who is authorized to act for or in place of:

(1) An owner or operator of a scheduled airline by written authority; or

(2) An owner or operator of a non-scheduled airline, by power of attorney.

The authority to act shall be in writing and satisfactory to the port director.

(d) *Commercial aircraft*. A “commercial aircraft” is any aircraft transporting passengers and/or cargo for some payment or other consideration, including money or services rendered.

(e) *International airport*. An “international airport” is any airport designated by:

(1) The Secretary of the Treasury or the Commissioner of Customs as a port of entry for aircraft arriving in the U.S. from any place outside thereof and for the merchandise carried on such aircraft;

(2) The Attorney General as a port of entry for aliens arriving on such aircraft; and

(3) The Secretary of Health and Human Services as a place for quarantine inspection.

(f) *Landing rights airport*. A “landing rights airport” is any airport, other than an international airport or user fee airport, at which flights from a foreign area are given permission by Customs to land.

(g) *Preclearance*. “Preclearance” is the examination and inspection of air travelers and their baggage, at the request of an airline, at foreign places where Customs personnel are stationed for that purpose. Preclearance may be

used only for air travelers and their baggage, not for merchandise.

(h) *Private aircraft*. A “private aircraft” is any aircraft engaged in a personal or business flight to or from the U.S. which is not:

(1) Carrying passengers and/or cargo for commercial purposes;

(2) Leaving the U.S. carrying neither passengers nor cargo in order to land passengers and/or cargo in a foreign area for commercial purposes; or

(3) Returning to the U.S. carrying neither passengers nor cargo in ballast after leaving with passengers and/or cargo for commercial purposes;

(i) *Public aircraft*. A “public aircraft”, is any aircraft owned by, or under the complete control and management of the U.S. government or any of its agencies, or any aircraft owned by or under the complete control and management of any foreign government which exempts public aircraft of the U.S. from arrival, entry and clearance requirements similar to those provided in subpart C of this part, but not including any government owned aircraft engaged in carrying persons or property for commercial purposes. This definition applies if the aircraft is:

(1) Manned entirely by members of the armed forces or civil service of such government, or by both;

(2) Transporting only property of such government, or passengers traveling on official business of such government; or

(3) Carrying neither passengers nor cargo.

(j) *Residue cargo*. “Residue cargo” is any cargo on board an aircraft arriving in the U.S. from a foreign area if the:

(1) Final delivery airport in the U.S. is not the port of arrival; or

(2) Cargo remains on board the aircraft and travels from port to port in the U.S., for final delivery in a foreign area.

(k) *Scheduled airline*. A “scheduled airline” is any individual, partnership, corporation or association:

(1) Engaged in air transportation under regular schedules to, over, away from, or within the U.S.; and

(2) Holding a Foreign Air Carrier Permit or a Certificate of Public Convenience and Necessity, issued by the Department of Transportation pursuant to 14 CFR parts 201 and 213.

(1) *United States*. Except when used in another context, “U.S.” means the territory of the several States, the District of Columbia, and Puerto Rico, including the territorial waters and overlying airspace.

(m) *User fee airport*. A “user fee airport” is an airport so designated by Customs. Flights from a foreign area may be granted permission to land at a user fee airport rather than at an international airport or a landing rights airport. An informational listing of user fee airports is contained in § 122.15.

[T.D. 88-12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 88-16, 53 FR 10371, Mar. 31, 1988; T.D. 92-90, 57 FR 43397, Sept. 21, 1992; T.D. 93-66, 58 FR 44130, Aug. 19, 1993]

### § 122.2 Other Customs laws and regulations.

Except as otherwise provided for in this chapter, and insofar as such laws and regulations are applicable, aircraft arriving or having arrived from or departing for any foreign port or place, and the persons and merchandise, including baggage, carried thereon, shall be subject to the laws and regulations applicable to vessels to the extent that such laws and regulations are administered or enforced by Customs, as provided in 19 U.S.C. 1644 and 1644a.

[T.D. 88-12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 98-74, 63 FR 51288, Sept. 25, 1998]

### § 122.3 Availability of forms.

The forms mentioned in this part may be purchased from the director of port of entry. A small quantity of each form is set aside by port directors for free distribution and official use.

### § 122.4 English language required.

A translation in the English language shall be attached to the original and each copy of any form or document written or printed in a foreign language.

### § 122.5 Reproduction of Customs forms.

(a) *Specifications*. Subject to approval by Customs, the forms mentioned in this part may be printed by private parties if the specified size, wording arrangement, style and size of type, and quality of paper are used.

(b) *Exceptions*. Port directors may accept privately printed copies of the General Declaration (Customs Form 7507) and air cargo manifest (Customs Form 7509) which are different from the official forms. The privately printed forms shall include all information required on the official forms. The differences allowed are:

(1) *General Declaration*. Customs Form 7507 may be printed in several languages, so long as the form includes an English version. The instructions on the reverse side of the official form may be omitted.

(2) *Air cargo manifest*. Customs Form 7509 may be changed to allow for additional information used by the airline.

## Subpart B—Classes of Airports

### § 122.11 Designation as international airport.

(a) *Procedure*. International airports, as defined in § 122.1(e), will be designated after due investigation to establish that sufficient need exists in any port to justify such designation and to determine the airport best suited for such purpose. In each case, a specific airport will be chosen. International airports will be publicly owned, unless circumstances require otherwise.

(b) *Withdrawal of designation*. The designation as an international airport may be withdrawn for any of the following reasons:

(1) The amount of business clearing through the airport does not justify maintenance of inspection equipment and personnel;

(2) Proper facilities are not provided or maintained by the airport;

(3) The rules and regulations of the Federal Government are not followed; or

(4) Some other location would be more useful.

(c) *Providing office space to the Federal Government*. Each international airport

## § 122.12

shall provide, without cost to the Federal Government, proper office and other space for the sole use of Federal officials working at the airport. A suitable paved loading area shall be supplied by each airport at a place convenient to the office space. The loading area shall be kept for the use of aircraft entering or clearing through the airport.

### § 122.12 Operation of international airports.

(a) *Entry, clearance and charges.* International airports are open to all aircraft for entry and clearance at no charge by Customs. However, charges may be assessed by the airport for commercial or private use of the airport.

(b) *Servicing of aircraft.* When an aircraft enters or clears through an international airport, it shall be promptly serviced by airport personnel solely on the basis of order of arrival or readiness for departure. Servicing charges imposed by the airport operators shall not be greater than the schedule of charges in effect at the airport in question.

(c) *FAA rules; denial of permission to land. Federal Aviation Administration rules.* International airports shall follow and enforce any requirements for airport operations, including airport rules, that are set out by the Federal Aviation Administration in 14 CFR part 91. In addition, except in the case of an emergency or forced landing (see § 122.35), permission to land at an international airport may be denied if advance electronic information for incoming foreign cargo aboard the aircraft has not been received as provided in § 122.48a.

(d) *Additional requirements.* Additional requirements may be put into effect at a particular airport as the needs of the Customs port served by the airport demand.

[T.D. 88-12, 53 FR 9292, Mar. 22, 1988, as amended by CBP Dec. 03-32, 68 FR 68170, Dec. 5, 2003]

### § 122.13 List of international airports.

The following is a list of international airports of entry designated by the Secretary of the Treasury.

## 19 CFR Ch. I (4-1-05 Edition)

### *Location and Name*

Albany, N.Y.—Albany County Airport  
Baudette, Minn.—Baudette International Airport  
Bellingham, Wash.—Bellingham International Airport  
Brownsville, Tex.—Brownsville International Airport  
Burlington, Vt.—Burlington International Airport  
Calexico, Calif.—Calexico International Airport  
Caribou, Maine—Caribou Municipal Airport  
Chicago, Ill.—Midway Airport  
Cleveland, Ohio—Cleveland Hopkins International Airport  
Cut Bank, Mont.—Cut Bank Airport  
Del Rio, Tex.—Del Rio International Airport  
Detroit, Mich.—Detroit City Airport  
Detroit, Mich.—Detroit Metropolitan Wayne County Airport  
Douglas, Ariz.—Bisbee-Douglas International Airport  
Duluth, Minn.—Duluth International Airport  
Duluth, Minn.—Sky Harbor Airport  
El Paso, Tex.—El Paso International Airport  
Fort Lauderdale, Fla.—Fort Lauderdale-Hollywood International Airport  
Friday Harbor, Wash.—Friday Harbor Seaplane Base  
Grand Forks, N. Dak.—Grand Forks International Airport  
Great Falls, Mont.—Great Falls International Airport  
Havre, Mont.—Havre City-County Airport  
Houlton, Maine—Houlton International Airport  
International Falls, Minn.—Falls International Airport  
Juneau, Alaska—Juneau Municipal Airport  
Juneau, Alaska—Juneau Harbor Seaplane Base  
Ketchikan, Alaska—Ketchikan Harbor Seaplane Base  
Key West, Fla.—Key West International Airport  
Laredo, Tex.—Laredo International Airport  
Massena, N.Y.—Richards Field  
Maverick, Tex.—Maverick County Airport  
McAllen, Tex.—Miller International Airport  
Miami, Fla.—Chalk Seaplane Base  
Miami, Fla.—Miami International Airport  
Minot, N.Dak.—Minot International Airport  
Nogales, Ariz.—Nogales International Airport  
Ogdensburg, N.Y.—Ogdensburg Harbor  
Ogdensburg, N.Y.—Ogdensburg International Airport  
Oroville, Wash.—Dorothy Scott Airport  
Oroville, Wash.—Dorothy Scott Seaplane Base  
Pembina, N.Dak.—Pembina Municipal Airport  
Port Huron, Mich.—St. Clair County International Airport  
Port Townsend, Wash.—Jefferson County International Airport

Ranier, Minn.—Ranier International Seaplane Base  
 Rochester, N.Y.—Rochester-Monroe County Airport  
 Rouses Point, N.Y.—Rouses Point Seaplane Base  
 San Diego, Calif.—San Diego International Airport (Lindbergh Field)  
 Sandusky, Ohio—Griffing-Sandusky Airport  
 Sault Ste. Marie, Mich.—Sault Ste. Marie City-County Airport  
 Seattle, Wash.—King County International Airport  
 Seattle, Wash.—Lake Union Air Service (Seaplanes)  
 Tampa, Fla.—Tampa International Airport  
 Tucson, Ariz.—Tucson International Airport  
 Watertown, N.Y.—Watertown New York International Airport  
 West Palm Beach, Fla.—Palm Beach International Airport  
 Williston, N. Dak.—Sloulin Field International Airport  
 Wrangell, Alaska—Wrangell Seaplane Base  
 Yuma, Ariz.—Yuma International Airport

[T.D. 88-12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 96-44, 61 FR 25778, May 23, 1996; T.D. 99-40, 64 FR 18566, Apr. 15, 1999]

#### § 122.14 Landing rights airport.

(a) *Permission to land.* Permission to land at a landing rights airport may be given as follows:

(1) *Scheduled flight.* The scheduled aircraft of a scheduled airline may be allowed to land at a landing rights airport. Permission is given by the director of the port, or his representative, at the port nearest to which first landing is made.

(2) *Other aircraft.* All other aircraft may be allowed to land at a landing rights airport by the director of the port of entry or station nearest the first place of landing.

(3) *Additional flights, charters or changes in schedule*—(i) *Scheduled aircraft.* If a new carrier plans to set up a new flight schedule, or an established carrier makes changes in its approved schedule, landing rights may be granted by the port director.

(ii) *Additional or charter flight.* If a carrier or charter operator wants to begin operating or to add flights, application shall be made to the port director for landing rights. All requests shall be made not less than 48 hours before the intended time of arrival, except in emergencies. If the request is oral, it shall be put in writing before or at the time of arrival.

(4) *Emergency or forced landing.* Permission to land is not required for an emergency or forced landing (see § 122.35).

(b) *Notice to Federal agencies.* If an aircraft is given permission to land at a landing rights airport, the Customs officer who granted the landing rights shall notify the Public Health Service, the Immigration and Naturalization Service, the Animal and Plant Health Inspection Service, and any other interested Federal agency at once.

(c) *Payment of expenses.* In the case of an arrival at a location outside the limits of a port of entry, the owner, operator or person in charge of the aircraft shall pay any added charges for inspecting the aircraft, passengers, employees and merchandise when landing rights are given (see §§ 24.17 and 24.22(e) of this chapter).

(d) *Denial or withdrawal of landing rights.* Permission to land at a landing rights airport may be denied or withdrawn for any of the following reasons:

(1) Appropriate and/or sufficient Federal Government personnel are not available;

(2) Proper inspectional facilities or equipment are not available at, or maintained by, the requested airport;

(3) The entity requesting services has failed to abide by appropriate instructions of a Customs officer;

(4) Advance cargo information has not been received as provided in § 122.48a;

(5) Other reasonable grounds exist to believe that Federal rules and regulations pertaining to safety, including cargo safety and security, and Customs, or other inspectional activities have not been followed; or

(6) The granting of the requested landing rights would not be in the best interests of the Government.

(e) *Appeal of denial or withdrawal.* In the event landing rights are denied or withdrawn by the port director, a written appeal of the decision may be made to the Assistant Commissioner, Office of Field Operations, Headquarters.

[T.D. 88-12, 53 FR 9292, Mar. 22, 1988. Redesignated and amended by T.D. 92-90, 57 FR 43397, Sept. 21, 1992; T.D. 95-77, 60 FR 50020, Sept. 27, 1995; T.D. 99-27, 64 FR 13675, Mar. 22, 1999; CBP Dec. 03-32, 68 FR 68170, Dec. 5, 2003]

## § 122.15

## 19 CFR Ch. I (4–1–05 Edition)

### § 122.15 User fee airports.

(a) *Permission to land.* The procedures for obtaining permission to land at a user fee airport are the same procedures as those set forth in §122.14 for landing rights airports.

(b) *List of user fee airports.* The following is a list of user fee airports designated by the Commissioner of Customs in accordance with 19 U.S.C. 58b. The list is subject to change without notice. Information concerning service at any user fee airport can be obtained by calling the airport or its authority directly.

| Location                         | Name                                      |
|----------------------------------|---|
| Addison, Texas .....             | Addison Airport.                          |
| Blountville, Tennessee.          | Tri-City Regional Airport.                |
| Broomfield, Colorado.            | Jefferson County Airport.                 |
| Daytona Beach, Florida.          | Daytona Beach International Airport.      |
| Decatur, Indiana .....           | Decatur Airport.                          |
| Dublin, Virginia .....           | New River Valley Airport.                 |
| Edinburg, Texas .....            | Edinburg International Airport.           |
| Egg Harbor Township, New Jersey. | Atlantic City International Airport.      |
| Englewood, Colorado.             | Centennial Airport.                       |
| Fort Wayne, Indiana              | Baer Field Airport.                       |
| Fort Worth, Texas ..             | Fort Worth Alliance Airport.              |
| Johnson City, New York.          | Binghamton Regional Airport.              |
| Lexington, Kentucky              | Blue Grass Airport.                       |
| Manchester, New Hampshire.       | Manchester Airport.                       |
| McKinney, Texas ...              | McKinney Municipal Airport.               |
| Medford, Oregon ....             | Rogue Valley International Airport.       |
| Melbourne, Florida               | Melbourne Airport.                        |
| Mesa, Arizona .....              | Williams Gateway Airport.                 |
| Midland, Texas .....             | Midland International Airport.            |
| Morristown, New Jersey.          | Morristown Municipal Airport.             |
| Moses Lake, Washington.          | Port of Moses Lake.                       |
| Myrtle Beach, South Carolina.    | Myrtle Beach International Airport.       |
| Ocala, Florida .....             | Ocala International Airport.              |
| Palm Springs, California.        | Palm Springs International Airport.       |
| Rochester, Minnesota.            | Rochester Airport.                        |
| Roswell, New Mexico.             | Rowell Air Industrial Center.             |
| San Bernardino, California.      | San Bernardino International Airport.     |
| Sarasota, Florida ....           | Sarasota/Bradenton International Airport. |
| Scottsdale, Arizona              | Scottsdale Airport.                       |
| Terre Haute, Indiana.            | Hulman Regional Airport.                  |
| Victorville, California          | Southern California Logistics Airport.    |
| Waterford, Michigan              | Oakland International Airport.            |
| Waukegan, Illinois ..            | Waukegan Regional Airport.                |
| West Chicago, Illinois.          | Dupage County Airport.                    |
| West Trenton, New Jersey.        | Trenton Mercer Airport.                   |
| Wheeling, Illinois ....          | Palwaukee Airport.                        |

| Location              | Name                |
|-----------------------|---------------------|
| Wilmington, Ohio .... | Wilmington Airport. |
| Ypsilanti, Michigan   | Willow Run Airport. |

(c) *Withdrawal of designation.* The designation as a user fee airport shall be withdrawn under either of the following circumstances:

(1) If either Customs or the airport authority gives 120 days written notice of termination to the other party; or

(2) If any amounts due to be paid to Customs are not paid on a timely basis.

[T.D. 92–90, 57 FR 43397, Sept. 21, 1992, as amended by T.D. 93–32, 58 FR 25933, Apr. 29, 1993; T.D. 95–2, 59 FR 67622, Dec. 30, 1994; T.D. 95–62, 60 FR 41804, Aug. 14, 1995; T.D. 96–67, 61 FR 49059, Sept. 18, 1996; T.D. 97–64, 62 FR 37133, July 11, 1997; T.D. 99–9, 64 FR 7502, Feb. 16, 1999; T.D. 00–34, 65 FR 31265, May 17, 2000; T.D. 01–69, 66 FR 49275, Sept. 27, 2001; T.D. 01–70, 66 FR 50104, Oct. 2, 2001; T.D. 02–27, 67 FR 35723, May 21, 2002; CBP Dec. 03–09, 68 FR 42589, July 18, 2003; CBP Dec. 03–22, 68 FR 50698, Aug. 22, 2003]

### Subpart C—Private Aircraft

#### § 122.21 Application.

This subpart applies to all private aircraft as defined in §122.1(h). No other provisions of this part apply to private aircraft, except where stated in this subpart.

#### § 122.22 Notice of arrival.

When arriving in the U.S. from a foreign area, all private aircraft not covered by §122.23 shall give advance notice of arrival as required in §122.31.

#### § 122.23 Private aircraft arriving from areas south of the U.S.

(a) *Definitions.* (1) For the purpose of this section, “private aircraft” means all aircraft except:

(i) Public aircraft;

(ii) Those aircraft operated on a regularly published schedule, pursuant to a certificate of public convenience and necessity or foreign aircraft permit issued by the Department of Transportation, authorizing interstate, overseas air transportation; and

(iii) Those aircraft with a seating capacity of more than 30 passengers or a maximum payload capacity of more than 7,500 pounds which are engaged in air transportation for compensation or

hire on demand. (See 49 U.S.C. App. 1372 and 14 CFR part 298).

(2) The term “place” as used in this section means anywhere outside of the inner boundary of the Atlantic (Coastal) Air Defense Identification Zone (ADIZ) south of 30 degrees north latitude, anywhere outside of the inner boundary of the Gulf of Mexico (Coastal) ADIZ, or anywhere outside of the inner boundary of the Pacific (Coastal) ADIZ south of 33 degrees north latitude.

(b) *Advance report of penetration of U.S. airspace.* All private aircraft arriving in the Continental U.S. via the U.S./Mexican border or the Pacific Coast from a foreign place in the Western Hemisphere south of 33 degrees north latitude, or from the Gulf of Mexico and Atlantic Coasts from a place in the Western Hemisphere south of 30 degrees north latitude, from any place in Mexico, from the U.S. Virgin Islands, or (notwithstanding the definition of “United States” in §122.1(1)) from Puerto Rico, (which if from Puerto Rico, are conducting flight under visual flight rules (VFR)), shall furnish a notice of intended arrival to Customs at the nearest designated airport to point of crossing listed in §122.24(b), for the first landing in the U.S. The notice must be furnished at least 1 hour before crossing the U.S. coastline or border. The notice may be furnished directly to Customs by telephone, radio, or other means, or may be furnished through the Federal Aviation Administration to Customs. The requirement to furnish a notice of intended arrival shall not apply to private aircraft departing from Puerto Rico and conducting flight under instrument flight rules (IFR) until crossing the U.S. coastline or proceeding north of 30 degrees north latitude.

(c) *Contents of notice.* The advance notice of arrival shall include the following:

- (1) Aircraft registration number;
- (2) Name of aircraft commander;
- (3) Number of U.S. citizen passengers;
- (4) Number of alien passengers;
- (5) Place of last departure;
- (6) Estimated time and location of crossing U.S. border/coastline;
- (7) Estimated time of arrival;

(8) Name of intended U.S. airport of first landing, as listed in §122.24, unless an exemption has been granted under §122.25, or the aircraft has not landed in foreign territory or is arriving directly from Puerto Rico, or the aircraft was inspected by Customs officers in the U.S. Virgin Islands.

#### § 122.24 Landing requirements.

(a) *In general.* Private aircraft arriving in the U.S. from a foreign area shall follow the landing requirements set out in §§122.23 and 122.36.

(b) *Special requirements.* Private aircraft required to furnish a notice of intended arrival in compliance with §122.23 shall land for Customs processing at the nearest designated airport to the border or coastline crossing point as listed in this paragraph unless exempted from this requirement in accordance with §122.25. In addition to the requirements of this section, private aircraft commanders must comply with all other landing and notice of arrival requirements. This requirement shall not apply to private aircraft which have not landed in foreign territory or are arriving directly from Puerto Rico or if the aircraft was inspected by Customs officers in the U.S. Virgin Islands.

| Location              | Name  |
|-----------------------|---|
| Beaumont, Tex ....    | Jefferson County Airport.                           |
| Brownsville, Tex ..   | Brownsville International Airport.                  |
| Calexico, Calif ..... | Calexico International Airport.                     |
| Corpus Christi, Tex.  | Corpus Christi International Airport.               |
| Del Rio, Tex .....    | Del Rio International Airport.                      |
| Douglas, Ariz .....   | Bisbee-Douglas International Airport.               |
| Douglas, Ariz .....   | Douglas Municipal Airport.                          |
| Eagle Pass, Tex ..    | Eagle Pass Municipal Airport.                       |
| El Paso, Tex .....    | El Paso International Airport.                      |
| Fort Lauderdale, Fla. | Fort Lauderdale Executive Airport.                  |
| Fort Lauderdale, Fla. | Fort Lauderdale-Hollywood International Airport.    |
| Fort Pierce, Fla .... | St. Lucie County Airport.                           |
| Houston, Tex .....    | William P. Hobby Airport.                           |
| Key West, Fla .....   | Key West International Airport.                     |
| Laredo, Tex .....     | Laredo International Airport.                       |
| McAllen, Tex .....    | Miller International Airport.                       |
| Miami, Fla .....      | Miami International Airport.                        |
| Miami, Fla .....      | Opa-Locka Airport.                                  |
| Miami, Fla .....      | Tamiami Airport.                                    |
| Midland, TX .....     | Midland International Airport.                      |
| New Orleans, La ..    | New Orleans International Airport (Moissant Field). |
| New Orleans, La ..    | New Orleans Lakefront Airport.                      |
| Nogales, Ariz .....   | Nogales International Airport.                      |
| Presidio, Tex .....   | Presidio-Lely International Airport.                |
| San Diego, Calif ..   | Brown Field.  |
| Santa Teresa, N. Mex. | Santa Teresa Airport.                               |



## § 122.25

## 19 CFR Ch. I (4-1-05 Edition)

| Location                   | Name                              |
|----------------------------|-----------------------------------|
| Tampa, Fla. ....           | Tampa International Airport.      |
| Tucson, Ariz. ....         | Tucson International Airport.     |
| West Palm Beach, Fla. .... | Palm Beach International Airport. |
| Wilmington, NC ....        | New Hanover County Airport        |
| Yuma, Ariz. ....           | Yuma International Airport.       |

[T.D. 88-12, 53 FR 9292, Mar. 22, 1988, as amended by 89-2, Dec. 21, 1988; T.D. 89-2, 53 FR 51272, Dec. 21, 1988; T.D. 89-44, 54 FR 14214, Apr. 10, 1989; T.D. 93-67, 58 FR 44444, Aug. 23, 1993; T.D. 94-34, 59 FR 16122, Apr. 6, 1994; T.D. 97-35, 62 FR 24815, May 7, 1997]

### § 122.25 Exemption from special landing requirements.

(a) *Request.* Any company or individual that has operational control over an aircraft required to give advance notice of arrival under § 122.23 may request an exemption from the landing requirements in § 122.24. Single overflight exemptions may be granted to entities involved in air ambulance type operations when emergency situations arise and in cases involving the non-emergency transport of persons seeking medical treatment in the U.S. All approvals of requests for overflight exemptions and the granting of authority to be exempted from the landing requirements are at the discretion of the port director. Exemptions may allow aircraft to land at any airport in the U.S. staffed by Customs. Aircraft traveling under an exemption shall continue to follow advance notice and general landing rights requirements.

(b) *Procedure.* An exemption request shall be made to the port director at the airport at which the majority of Customs overflight processing is desired by the applicant. Except for air ambulance operations and other flights involving the non-emergency transport of persons seeking medical treatment in the U.S., the requests shall be signed by an officer of the company or by the requesting individual and be notarized or witnessed by a Customs officer. The requests shall be submitted:

(1) At least 30 days before the anticipated first arrival, if the request is for an exemption covering a number of flights over a period of one year, or

(2) At least 15 days before the anticipated arrival, if the request is for a single flight, or

(3) In cases involving air ambulance operations when emergency situations arise and other flights involving the non-emergency transport of persons seeking medical treatment in the U.S., if time permits, at least 24 hours prior to departure. If this cannot be accomplished, Customs will allow receipt of the overflight exemption application up to departure time. In cases of extreme medical emergency, Customs will accept overflight exemption requests in flight through a Federal Aviation Administration Flight Service Station.

(c) *Content of request.* All requests for exemption from special landing requirements, with the exception of those for air ambulance operations and other flights involving the non-emergency transport of persons seeking medical treatment in the U.S., shall include the following information. Requests for exemptions for air ambulance operations and other flights involving the non-emergency transport of persons for medical treatment in the U.S. shall include the following information except for paragraphs (c)(5) and (c)(6) of this section:

(1) Aircraft registration number(s) and manufacturer's serial number(s) for all aircraft owned or operated by the applicant that will be utilizing the overflight exemption;

(2) Identification information for each aircraft including class, manufacturer, type, number, color scheme, and type of engine (e.g., turbojet, turbofan, turboprop, reciprocating, helicopter, etc.);

(3) A statement that the aircraft is equipped with a functioning mode C (altitude reporting) transponder which will be in use during overflight, that the overflights will be made in accord with instrument flight rules (IFR), and that the overflights will be made at altitudes above 12,500 feet mean sea level (unless otherwise instructed by Federal Aviation Administration controllers);

(4) Name and address of the applicant operating the aircraft, if the applicant is a business entity, the address of the headquarters of the business (include state of incorporation if applicable), and the names, addresses, Social Security numbers (if available), and dates

of birth of the company officer or individual signing the application. If the aircraft is operated under a lease, include the name, address, Social Security number (if available), and date of birth of the owner if an individual, or the address of the headquarters of the business (include state of incorporation if applicable), and the names, addresses, Social Security numbers, and dates of birth of the officers of the business;

(5) Individual, signed applications from each usual or anticipated pilot or crewmember for all aircraft for which an overflight exemption is sought stating name, address, Social Security number (if available), Federal Aviation Administration certificate number (if applicable), and place and date of birth;

(6) A statement from the individual signing the application that the pilot(s) and crewmember(s) responding to paragraph (c)(5) of this section are those intended to conduct overflights, and that to the best of the individual's knowledge, the information supplied in response to paragraph (c)(5) of this section is accurate;

(7) Names, addresses, Social Security numbers (if applicable), and dates of birth for all usual or anticipated passengers. An approved passenger must be on board to utilize the overflight exemptions.

NOTE: Where the Social Security number is requested, furnishing of the SSN is voluntary. The authority to collect the SSN is 19 U.S.C. 66, 1433, 1459 and 1624. The primary purpose for requesting the SSN is to assist in ascertaining the identity of the individual so as to assure that only law-abiding persons will be granted permission to land at interior airports in the U.S. without first landing at one of the airports designated in §122.24. The SSN will be made available to Customs personnel on a need-to-know basis. Failure to provide the SSN may result in a delay in processing of the application;

(8) Description of the usual or anticipated baggage or cargo if known, or the actual baggage or cargo;

(9) Description of the applicant's usual business activity;

(10) Name(s) of the airport(s) of intended first landing in the U.S. Actual overflights will only be permitted to specific approved airports;

(11) Foreign place or places from which flight(s) will usually originate; and

(12) Reasons for request for overflight exemption.

(d) *Procedure following exemption.* (1) If a private aircraft is granted an exemption from the landing requirements as provided in this section, the aircraft commander shall notify Customs at least 60 minutes before:

(i) Crossing into the U.S. over a point on the Pacific Coast north of 33 degrees north latitude; or

(ii) Crossing into the U.S. over a point of the Gulf of Mexico or Atlantic Coast north of 30 degrees north latitude; or

(iii) Crossing into the U.S. over the Southwestern land border (defined as the U.S.-Mexican border between Brownsville, Texas, and San Diego, California). Southwestern land border crossings must be made while flying in Federal Aviation Administration published airways.

(2) The notice shall be given to a designated airport specified in §122.24. The notice may be furnished directly to Customs by telephone, radio or other means, or may be furnished through the Federal Aviation Administration to Customs. If notice is furnished pursuant to this paragraph, notice pursuant to §§122.23 and 122.24 is unnecessary.

(3) All overflights must be conducted pursuant to an instrument flight plan filed with the Federal Aviation Administration or equivalent foreign aviation authority prior to the commencement of the overflight.

(4) The owner or aircraft commander of a private aircraft granted an exemption from the landing requirements must:

(i) Notify Customs of a change of Federal Aviation Administration or other (foreign) registration number for the aircraft;

(ii) Notify Customs of the sale, theft, modification or destruction of the aircraft;

(iii) Notify Customs of changes of usual or anticipated pilots or crewmembers as specified in paragraph (c)(5) of this section. Every pilot and crewmember participating in an overflight must have prior Customs approval either through initial application and approval, or through a supplemental application submitted by the

new pilot or crewmember and approved by Customs before commencement of the pilot's or crewmember's first overflight.

(iv) Request permission from Customs to conduct an overflight to an airport not listed in the initial overflight application as specified in paragraph (c)(10) of this section. The request must be directed to the port director who approved the initial request for an overflight exemption.

(v) Retain copies of the initial request for an overflight exemption, all supplemental applications from pilots or crewmembers, and all requests for additional landing privileges as well as a copy of the letter from Customs approving each of these requests. The copies must be carried on board any aircraft during the conduct of an overflight.

(5) The notification specified in paragraph (d)(4) of this section must be given to Customs within 5 working days of the change, sale, theft, modification, or destruction, or before a flight for which there is an exemption, whichever occurs earlier.

(e) *Inspection of aircraft having or requesting overflight exemption.* Applicants for overflight exemptions must agree to make the subject aircraft available for inspection by Customs to determine if the aircraft is capable of meeting Customs requirements for the proper conduct of an overflight. Inspections may be conducted during the review of an initial application or at any time during the term of an overflight exemption.

[T.D. 89-24, 53 FR 5429, Feb. 3, 1989, as amended by T.D. 89-24, 53 FR 6884 and 6988, Feb. 15, 1989]

**§ 122.26 Entry and clearance.**

Private aircraft, as defined in §122.1(h), are not required to formally enter or to obtain formal clearance upon departure. However, entry and clearance requirements do apply to air charter and air taxi operators.

**§ 122.27 Documents required.**

(a) *Crewmembers and passengers.* Crewmembers and passengers on a private aircraft arriving in the U.S. shall make baggage declarations as set forth in part 148 of this chapter. An oral dec-

laration of articles acquired in foreign areas shall be made, unless a written declaration on Customs Form 6059-B is found necessary by inspecting officers.

(b) *Cargo.* (1) On arrival, cargo and unaccompanied baggage not carried for hire aboard a private aircraft may be listed on a baggage declaration on Customs Form 6059-B, and shall be entered. If the cargo or unaccompanied baggage is not listed on a baggage declaration, it shall be entered in the same manner as cargo carried for hire into the U.S.

(2) On departure, when a private aircraft leaves the U.S. carrying cargo not for hire, the Bureau of Census (15 CFR part 30) and the Export Administration Regulations (15 CFR parts 730 through 774) and any other applicable export laws shall be followed. A foreign landing certificate or certified copy of a foreign Customs entry is required as proof of exportation if the cargo includes:

(i) Merchandise valued at more than \$500.00; or

(ii) More than one case of alcoholic beverages withdrawn from a Customs bonded warehouse or otherwise in bond for direct exportation by private aircraft.

A foreign landing certificate, when required, shall be produced within six months from the date of exportation and shall be signed by a revenue officer of the foreign country to which the merchandise is exported, unless it is shown that the country has no Customs administration, in which case the certificate may be signed by the consignee or by the vessel's agent at the place of landing.

(c) *Pilot certificate/license, certificate of registration—*(1) *Pilot certificate/license.* A commander of a private aircraft arriving in the U.S. must present for inspection a valid pilot certificate/license, medical certificate, authorization, or license held by that person, when presentation for inspection is requested by a Customs officer.

(2) *Certificate of registration.* A valid certificate of registration for private aircraft which are U.S.-registered must also be presented upon arrival in the U.S., when presentation for inspection is requested by a Customs officer. A so-called "pink slip" is a duplicate copy

of the Aircraft Registration Application (FAA Form AC 8050-1), and does not constitute a valid certificate of registration authorizing travel internationally.

[T.D. 88-12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 91-61, 56 FR 32086, July 15, 1991; CBP Dec. 04-28, 69 FR 52599, Aug. 27, 2004]

**§ 122.28 Private aircraft taken abroad by U.S. residents.**

An aircraft belonging to a resident of the U.S. which is taken to a foreign area for non-commercial purposes and then returned to the U.S. by the resident shall be admitted under the conditions and procedures set forth in § 148.32 of this chapter. Repairs made abroad, and accessories purchased abroad shall be included in the baggage declaration as required by § 148.32(c), and may be subject to entry and payment of duty as provided in § 148.32.

**§ 122.29 Arrival fee and overtime services.**

Private aircraft may be subject to the payment of an arrival fee for services provided as set forth in § 24.22 of this chapter. For the procedures to be followed in requesting overtime services in connection with the arrival of private aircraft, see § 24.16 of this chapter.

[T.D. 93-85, 58 FR 54286, Oct. 21, 1993]

**§ 122.30 Other Customs laws and regulations.**

Sections 122.2 and 122.161 apply to private aircraft.

**Subpart D—Landing Requirements**

**§ 122.31 Notice of arrival.**

(a) *Application.* Except as provided in paragraph (b) of this section, all aircraft entering the U.S. from a foreign area shall give advance notice of arrival. When a private aircraft, as defined in § 122.23(a) of this part, enters the U.S. from a foreign area in the Western hemisphere south of the U.S., advance notice shall be given as provided in § 122.23. Aircraft arriving from Cuba shall follow the procedures set forth in subpart O of this part.

(b) *Exceptions for scheduled aircraft of a scheduled airline.* Advance notice is not required for aircraft of a scheduled airline arriving under a regular schedule. The regular schedule shall have been filed with the port director for the airport where the first landing is made.

(c) *Giving notice of arrival—(1) Procedure.* The commander of an aircraft covered by this section shall give the advance notice of arrival. Notice shall be given to the port director at the place of first landing, either:

(i) Directly by radio, telephone, or other method; or

(ii) Through Federal Aviation Administration flight notification procedure (see International Flight Information Manual, Federal Aviation Administration).

(2) *Reliable facilities.* When reliable means for giving notice are not available (for example, when departure is from a remote place) a landing shall be made at a place where notice can be sent prior to coming into the U.S.

(d) *Contents of notice.* The advance notice of arrival shall include the following information:

(1) Type of aircraft and registration number;

(2) Name of aircraft commander;

(3) Place of last foreign departure;

(4) International airport of intended landing or other place at which landing has been authorized by Customs;

(5) Number of alien passengers;

(6) Number of citizen passengers; and

(7) Estimated time of arrival.

(e) *Time of notice.* Notice of arrival shall be furnished far enough in advance to allow inspecting officers to reach the place of first landing of the aircraft.

(f) *Notice of other Federal agencies.* When advance notice is received, the port director shall inform any other concerned Federal agency.

[T.D. 88-12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 95-77, 60 FR 50020, Sept. 27, 1995]

**§ 122.32 Aircraft required to land.**

Any aircraft coming into the U.S., including Puerto Rico, from an area outside the U.S., is required to land, unless exempted by the Federal Aviation Administration.

## § 122.33

## 19 CFR Ch. I (4–1–05 Edition)

### § 122.33 Place of first landing.

(a) The first landing of an aircraft entering the United States from a foreign area will be:

(1) At a designated international airport (see § 122.13), provided that permission to land has not been denied pursuant to § 122.12(c);

(2) At a landing rights airport if permission to land has been granted (see § 122.14); or

(3) At a designated user fee airport if permission to land has been granted (see § 122.15).

(b) Permission to land at a landing rights airport or user fee airport is not required for an emergency or forced landing (see § 122.35).

[T.D. 92–90, 57 FR 43397, Sept. 21, 1992, as amended by CBP Dec. 03–32, 68 FR 68170, Dec. 5, 2003]

### § 122.35 Emergency or forced landing.

(a) *Application.* This section applies to emergency or forced landings made by aircraft when necessary for safety or the preservation of life or health, when such aircraft are:

(1) Travelling from airport to airport in the U.S. under a permit to proceed (see §§ 122.52, 122.54 and 122.83(d)), or a Customs Form 7509 (see § 122.113); or

(2) Coming into the U.S. from a foreign area.

(b) *Notice.* When an emergency or forced landing is made, notice shall be given:

(1) To the Customs Service at the intended place of first landing, nearest international airport, or nearest port of entry, as soon as possible;

(2) By the aircraft commander, other person in charge, or aircraft owner, who shall make a full report of the flight and the emergency or forced landing.

(c) *Passengers and crewmembers.* The aircraft commander or other person in charge shall keep all passengers and crewmembers in a separate place at the landing area until Customs officers arrive. Passengers and crewmembers may be removed if necessary for safety, or for the purpose of contacting Customs.

(d) *Merchandise and baggage.* The aircraft commander or other person in charge shall keep all merchandise and baggage together and unopened at the landing area until Customs officers ar-

rive. The merchandise and baggage may be removed for safety or to protect property.

(e) *Mail.* Mail may be removed from the aircraft, but shall be delivered at once to an officer or employee of the Postal Service.

### § 122.36 Responsibility of aircraft commander.

If an aircraft lands in the U.S. and Customs officers have not arrived, the aircraft commander shall hold the aircraft, and any merchandise or baggage on the aircraft for inspection. Passengers and crewmembers shall be kept in a separate place until Customs officers authorize their departure.

### § 122.37 Precleared aircraft.

(a) *Application.* This section applies when aircraft carrying crew, passengers and baggage, or merchandise which has been precleared pursuant to § 148.22 of this chapter at a location listed in § 101.5 of this chapter and makes an unscheduled or unintended landing at an airport in the U.S.

(b) *Notice.* The aircraft commander or agent shall give written notice to the Customs office at:

(1) The intended place of unloading; and

(2) The place of preclearance.

(c) *Time of notice.* Notice shall be given within 7 days of the unscheduled or unintended landing unless other arrangements have been made in advance between the carrier and the port director.

### § 122.38 Permit and special license to unlade and lade.

(a) *Applicability.* Before any passengers, baggage, or merchandise may be unladen or laden aboard on arrival or departure of an aircraft subject to these regulations, a permit and/or special license to unlade or lade shall be obtained from Customs.

(1) *Permit to unlade or lade.* A permit is required to obtain Customs supervision of unloading and lading during official Customs duty hours.

(2) *Special license to unlade or lade.* A special license is required to obtain Customs supervision of unloading and lading at any time not within official

Customs duty hours (generally, during overtime hours, Sundays or holidays).

(b) *Authorization required.* A permit or special license shall be required for each arrival and departure unless a term permit or special license has been granted. No permit or special license shall be issued unless the carrier complies with the terminal facilities and employee list requirements of § 4.30 of this chapter.

(c) *Term permit or special license.* A term permit or special license may be issued covering all arrivals and departures during a period of up to one year, providing local arrangements have been made to notify Customs before services are needed. The notice shall specify the kinds of services requested, and the exact times they will be needed. No term permit or special license shall be issued, and any term permit or special license already issued shall be revoked, unless the carrier complies with the terminal facilities and employee list requirements of § 4.30 of this chapter. In addition, a term permit or special license to unlade or lade already issued will not be applicable to any inbound or outbound flight, with respect to which Customs and Border Protection (CBP) has not received the advance electronic cargo information required, respectively, under § 122.48a or 192.14(b)(1)(ii) of this chapter (see paragraph (g) of this section).

(d) *Procedures.* The application for a permit and special license to unlade or lade shall be made by the owner, operator, or agent for an aircraft on Customs Form 3171, and shall be submitted to the port director for the airport where the unloading and lading will take place. The application shall be accompanied by a bond on Customs Form 301, containing the bond conditions set forth in subpart G of part 113 of this chapter, or a cash deposit, unless this requirement is waived under paragraph (e) of this section.

(e) *Waiver of bond.* To insure prompt and orderly clearance of the aircraft, passengers, baggage, or merchandise, the port director may waive the requirement under paragraph (d) of this section that either a bond or a cash deposit be made, if he is convinced the revenue is protected and that all Customs requirements are satisfied.

(f) *Automatic renewal of term permit or special license.* Automatic renewal of a term permit or special license may be requested by the owner, operator, or agent for an aircraft when a bond on Customs Form 301 containing the appropriate bond conditions set forth in subpart G of part 113 of this chapter is on file. The request shall be for successive annual periods which conform to the automatic renewal periods of the bond. An application will be approved by the port director unless specific reasons exist for denial. If a request for automatic renewal is not approved, the port director shall notify the requestor, and shall state the reasons for the denial. To apply for automatic renewal, item 10 on Customs Form 3171 shall be changed by adding the following words after the period of time indicated: "And automatic annual renewal thereof for so long as the bond is renewed and remains in effect."

(g) *Advance receipt of electronic cargo information.* The CBP will not issue a permit to unlade or lade cargo upon arrival or departure of an aircraft, and a term permit or special license already issued will not be applicable to any inbound or outbound flight, with respect to which CBP has not received the advance electronic cargo information required, respectively, under § 122.48a or 192.14 of this chapter. In cases in which CBP does not receive complete cargo information in the time and manner and in the electronic format required by § 122.48a or 192.14 of this chapter, as applicable, CBP may delay issuance of a permit or special license to unlade or lade cargo, and a term permit or special license to unlade or lade already issued may not apply, until all required information is received. The CBP may also decline to issue a permit or special license to unlade or lade, and a term permit or special license already issued may not apply, with respect to the specific cargo for which advance information is not timely received electronically, as specified in § 122.48a or 192.14(b)(1)(ii) of this chapter.

[T.D. 88-12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 94-2, 58 FR 68526, Dec. 28, 1993; CBP Dec. 03-32, 68 FR 68170, Dec. 5, 2003]

**Subpart E—Aircraft Entry and Entry Documents**

**§ 122.41 Aircraft required to enter.**

All aircraft coming into the United States from a foreign area must make entry under this subpart except:

- (a) Public and private aircraft;
- (b) Aircraft chartered by, and transporting only cargo that is the property of, the U.S. Department of Defense (DoD), where the DoD-chartered aircraft is manned entirely by the civilian crew of the air carrier under contract to DoD; and
- (c) Aircraft traveling from airport to airport in the U.S. under subpart I, relating to residue cargo procedures.

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988, as amended by CBP Dec. 03–32, 68 FR 68170, Dec. 5, 2003]

**§ 122.42 Aircraft entry.**

(a) *By whom.* Entry shall be made by the aircraft commander or an agent.

(b) *Place of entry—(1) First landing at international airport.* Entry shall be made at the international airport at which first landing is made.

(2) *First landing at another airport.* If the first landing is not at an international airport pursuant to §§ 122.34 or 122.35, the aircraft commander or agent shall make entry at the nearest international airport or port of entry, unless some other place is allowed for the purpose.

(c) *Delivery of forms.* When the aircraft arrives, the aircraft commander or agent shall deliver any required forms to the Customs officer at the place of entry at once.

(d) *Exception to entry requirement.* Except for flights to Cuba (provided for in subpart O of this part), an aircraft of a scheduled airline which stops only for refueling at the first place or arrival in the U.S. shall not be required to enter provided:

- (1) That such aircraft departs within 24 hours after arrival;
- (2) No cargo, crew, or passengers are off-loaded; and
- (3) Landing rights at that airport as either a regular or alternate landing place shall have been previously secured.

**§ 122.43 General declaration.**

(a) *When required.* A general declaration, Customs Form 7507, shall be filed for all aircraft required to enter under § 122.41 (Aircraft required to enter).

(b) *Exception.* Aircraft arriving directly from Canada on a flight beginning in Canada and ending in the U.S. need not file a general declaration to enter. Instead, an air cargo manifest (see § 122.48) may be filed in place of the general declaration, regardless of whether cargo is on board. The air cargo manifest shall state the following:

I certify to the best of my knowledge and belief that this manifest contains an exact and true account of all cargo on board this aircraft.

Signature \_\_\_\_\_  
(Aircraft Commander or Agent)

(c) *Form.* The general declaration shall be on Customs Form 7507 or on a privately printed form prepared under § 122.5. The form shall contain all required information, unless the information is given in some other manner under subpart E of this part.

**§ 122.44 Crew baggage declaration.**

If an aircraft enters the U.S. from a foreign area, aircraft crewmembers shall file a crew baggage declaration as provided in subpart G, part 148 of this chapter.

**§ 122.45 Crew list.**

(a) *When required.* A crew list shall be filed by all aircraft required to enter under § 122.41.

(b) *Exception.* No crew list is required for aircraft arriving directly from Canada on a flight beginning in Canada and ending in the U.S. Instead, the total number of crewmembers may be shown on the general declaration.

(c) *Form.* The crew list shall show the full name (last name, first name, middle initial) of each crewmember, either:

- (1) On the general declaration in the column headed “Total Number of Crew”; or
- (2) On a separate, clearly marked document.

(d) *Crewmembers returning as passengers.* Crewmembers of any aircraft returning to the U.S. as passengers on a commercial aircraft from a trip on

which they were employed as crewmembers shall be listed on the aircraft general declaration or crew list.

#### § 122.46 Crew purchase list.

(a) *When required.* A crew purchase list shall be filed with the general declaration for any aircraft required to enter under § 122.41.

(b) *Exception.* A crew purchase list is not required for aircraft arriving directly from Canada on a flight beginning in Canada and ending in the U.S. If a written crew declaration is required for the aircraft under subpart G of part 148 of this chapter (Crewmember Declarations and Exemptions), it shall be attached to the air cargo manifest, along with the number of any written crew declarations.

(c) *Form.* If a crewmember enters articles for which a written crew declaration is not required (see subpart G, part 148 of this chapter), the articles shall be listed next to the crewmember's name on the general declaration, or on the attached crew purchase list. Articles listed on a written crew declaration need not be listed on the crew purchase list if:

- (1) The crew declaration is attached to the general declaration, or to the crew list which in turn is attached to the general declaration; and
- (2) The statement "Crew purchases as per attached crew declaration" appears on the general declaration or crew list.

#### § 122.47 Stores list.

(a) *When required.* A stores list shall be filed for all aircraft required to enter under § 122.41.

(b) *Form.* The aircraft stores shall be listed on the cargo manifest or on a separate list. If the stores are listed on a separate list, the list must be attached to the cargo manifest. The statement "Stores List Attached" must appear on the cargo manifest.

(c) *Contents—(1) Required listing.* The stores list shall include all of the following:

- (i) Alcoholic beverages, cigars, cigarettes and narcotic drugs, whether domestic or foreign;
- (ii) Bonded merchandise arriving as stores;
- (iii) Foreign merchandise arriving as stores; and

(iv) Equipment which must be licensed by the Secretary of State (see § 122.48(b)).

(2) *Other articles.* In the case of aircraft of scheduled airlines, other domestic supplies and equipment (if not subject to license) and fuel may be dropped from the stores list if the statement "Domestic supplies and equipment and fuel for immediate flight only, except as noted" appears on the cargo manifest or on the separate stores list. The stores list shall be attached to the cargo manifest.

(d) *Other statutes.* Section 446, Tariff Act of 1930, as amended (19 U.S.C. 1446), which covers supplies and stores kept on board vessels, applies to aircraft arriving in the U.S. from any foreign area.

#### § 122.48 Air cargo manifest.

(a) *When required.* Except as provided in paragraphs (d) and (e) of this section, an air cargo manifest need not be filed or retained aboard the aircraft for any aircraft required to enter under § 122.41. However, an air cargo manifest for all cargo on board must otherwise be available for production upon demand. The general declaration must be filed as provided in § 122.43.

(b) *Exception.* A cargo manifest is not required for merchandise, baggage and stores arriving from and departing for a foreign country on the same through flight. Any cargo manifest already on board may be inspected. All articles on board which must be licensed by the Secretary of State shall be listed on the cargo manifest. Company mail shall be listed on the cargo manifest.

(c) *Form.* The air cargo manifest, Customs Form 7509, must contain all required information regarding all cargo on board the aircraft, except that a more complete description of the cargo shipped may be provided by attaching to the manifest copies of the air waybills covering the cargo on board, including, if a consolidated shipment, any house air waybills. When copies of air waybills are attached, the statement "Cargo as per air waybills attached" must appear on the manifest. The manifest must reference an 11-digit air waybill number for each air waybill it covers. The air waybill number must not be used by the issuer for



§ 122.48a

19 CFR Ch. I (4–1–05 Edition)

another air waybill for a period of one year after issuance.

(d) *Unaccompanied baggage.* Unaccompanied baggage arriving in the U.S. under a check number from any foreign country by air and presented timely to Customs may be authorized for delivery by the carrier after inspection and examination without preparation of an entry, declaration, or being manifested as cargo. Such baggage must be found to be free of duty or tax under any provision of Chapter 98, HTSUS (19 U.S.C. 1202), and cannot be restricted or prohibited. Unaccompanied checked baggage not presented timely to Customs or presented timely and found by Customs to be dutiable, restricted, or prohibited may be subject to seizure. Such unaccompanied checked baggage shall be added to the cargo list in columns under the following headings:

| Check No. | Description | Where from | Destination | Name of examining officer | Disposition |
|-----------|-------------|------------|-------------|---------------------------|-------------|
|           |             |            |             |                           |             |

The two columns, headed “Name of examining officer” and “Disposition,” are provided on the cargo manifest for the use of Customs officers. Unaccompanied unchecked baggage arriving as air express or freight shall be manifested as other air express or freight.

(e) *Accompanied baggage in transit.* This section applies when accompanied baggage enters into the U.S. in one aircraft and leaves the U.S. in another aircraft. When passengers do not have access to their baggage while in transit through the U.S., the baggage is considered cargo and shall be listed on Customs Form 7509, Air Cargo Manifest.

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 89–1, 53 FR 51255, Dec. 21, 1988; T.D. 02–51, 67 FR 55721, Aug. 30, 2002; CBP Dec. 03–32, 68 FR 68170, Dec. 5, 2003]

**§ 122.48a Electronic information for air cargo required in advance of arrival.**

(a) *General requirement.* Pursuant to section 343(a), Trade Act of 2002, as amended (19 U.S.C. 2071 note), and subject to paragraph (e) of this section, for

any inbound aircraft required to enter under § 122.41, that will have commercial cargo aboard, Customs and Border Protection (CBP) must electronically receive from the inbound air carrier and, if applicable, an approved party as specified in paragraph (c)(1) of this section, certain information concerning the incoming cargo, as enumerated, respectively, in paragraphs (d)(1) and (d)(2) of this section. The CBP must receive such information no later than the time frame prescribed in paragraph (b) of this section. The advance electronic transmission of the required cargo information to CBP must be effected through a CBP-approved electronic data interchange system.

(1) *Cargo remaining aboard aircraft; cargo to be entered under bond.* Air cargo arriving from and departing for a foreign country on the same through flight and cargo that is unladen from the arriving aircraft and entered, in bond, for exportation, or for transportation and exportation (see subpart J of this part), are subject to the advance electronic information filing requirement under paragraph (a) of this section.

(2) *Diplomatic Pouches and Diplomatic Cargo.* When goods comprising a diplomatic or consular bag (including cargo shipments, containers, and the like identified as Diplomatic Pouch) that belong to the United States or to a foreign government are shipped under an air waybill, such cargo is subject to the advance reporting requirements, but the description of the shipment as Diplomatic Pouch will be sufficient detail for description. Shipments identified as Diplomatic Cargo, such as office supplies or unaccompanied household goods, are subject to the advance reporting requirements of paragraph (a) of this section.

(b) *Time frame for presenting data.* (1) *Nearby foreign areas.* In the case of aircraft under paragraph (a) of this section that depart for the United States from any foreign port or place in North America, including locations in Mexico, Central America, South America (from north of the Equator only), the Caribbean, and Bermuda, CBP must receive the required cargo information no later than the time of the departure of the aircraft for the United States

(the trigger time is no later than the time that wheels are up on the aircraft, and the aircraft is en route directly to the United States).

(2) *Other foreign areas.* In the case of aircraft under paragraph (a) of this section that depart for the United States from any foreign area other than that specified in paragraph (b)(1) of this section, CBP must receive the required cargo information no later than 4 hours prior to the arrival of the aircraft in the United States.

(c) *Party electing to file advance electronic cargo data.* (1) *Other filer.* In addition to incoming air carriers for whom participation is mandatory, one of the following parties meeting the qualifications of paragraph (c)(2) of this section, may elect to transmit to CBP the electronic data for incoming cargo that is listed in paragraph (d)(2) of this section:

(i) An Automated Broker Interface (ABI) filer (importer or its Customs broker) as identified by its ABI filer code;

(ii) A Container Freight Station/deconsolidator as identified by its FIRMS (Facilities Information and Resources Management System) code;

(iii) An Express Consignment Carrier Facility as identified by its FIRMS code; or,

(iv) An air carrier as identified by its carrier IATA (International Air Transport Association) code, that arranged to have the incoming air carrier transport the cargo to the United States.

(2) *Eligibility.* To be qualified to file cargo information electronically, a party identified in paragraph (c)(1) of this section must establish the communication protocol required by CBP for properly presenting cargo information through the approved data interchange system. Also, other than a broker or an importer (see § 113.62(j)(2) of this chapter), the party must possess a Customs international carrier bond containing all the necessary provisions of § 113.64 of this chapter.

(3) *Nonparticipation by other party.* If another party as specified in paragraph (c)(1) of this section does not participate in advance electronic cargo information filing, the party that arranges for and/or delivers the cargo shipment to the incoming carrier must fully dis-

close and present to the carrier the cargo information listed in paragraph (d)(2) of this section; and the incoming carrier, on behalf of the party, must present this information electronically to CBP under paragraph (a) of this section.

(4) *Required information in possession of third party.* Any other entity in possession of required cargo data that is not the incoming air carrier or a party described in paragraph (c)(1) of this section must fully disclose and present the required data for the inbound air cargo to either the air carrier or other electronic filer, as applicable, which must present such data to CBP.

(5) *Party receiving information believed to be accurate.* Where the party electronically presenting the cargo information required in paragraph (d) of this section receives any of this information from another party, CBP will take into consideration how, in accordance with ordinary commercial practices, the presenting party acquired such information, and whether and how the presenting party is able to verify this information. Where the presenting party is not reasonably able to verify such information, CBP will permit the party to electronically present the information on the basis of what that party reasonably believes to be true.

(d) *Non-consolidated/consolidated shipments.* For non-consolidated shipments, the incoming air carrier must transmit to CBP all of the information for the air waybill record, as enumerated in paragraph (d)(1) of this section. For consolidated shipments: the incoming air carrier must transmit to CBP the information listed in paragraph (d)(1) of this section that is applicable to the master air waybill; and the air carrier must transmit cargo information for all associated house air waybills as enumerated in paragraph (d)(2) of this section, unless another party as described in paragraph (c)(1) of this section electronically transmits this information directly to CBP.

(1) *Cargo information from air carrier.* The incoming air carrier must present to CBP the following data elements for inbound air cargo (an “M” next to any listed data element indicates that the data element is mandatory in all cases; a “C” next to the listed data element

indicates that the data element is conditional and must be transmitted to CBP only if the particular information pertains to the inbound cargo):

(i) Air waybill number (M) (The air waybill number is the International Air Transport Association (IATA) standard 11-digit number);

(ii) Trip/flight number (M);

(iii) Carrier/ICAO (International Civil Aviation Organization) code (M) (The approved electronic data interchange system supports both 3- and 2-character ICAO codes, provided that the final digit of the 2-character code is not a numeric value);

(iv) Airport of arrival (M) (The 3-alpha character ICAO code corresponding to the first airport of arrival in the Customs territory of the United States (for example, Chicago O'Hare = ORD; Los Angeles International Airport = LAX));

(v) Airport of origin (M) (The 3-alpha character ICAO code corresponding to the airport from which a shipment began its transportation by air to the United States (for example, if a shipment began its transportation from Hong Kong (HKG), and it transits through Narita, Japan (NRT), en route to the United States, the airport of origin is HKG, not NRT));

(vi) Scheduled date of arrival (M);

(vii) Total quantity based on the smallest external packing unit (M) (for example, 2 pallets containing 50 pieces each would be considered as 100, not 2);

(viii) Total weight (M) (may be expressed in either pounds or kilograms);

(ix) Precise cargo description (M) (for consolidated shipments, the word "Consolidation" is a sufficient description for the master air waybill record; for non-consolidated shipments, a precise cargo description or the 6-digit Harmonized Tariff Schedule (HTS) number must be provided (generic descriptions, specifically those such as "FAK" ("freight of all kinds"), "general cargo", and "STC" ("said to contain") are not acceptable));

(x) Shipper name and address (M) (for consolidated shipments, the identity of the consolidator, express consignment or other carrier, is sufficient for the master air waybill record; for non-consolidated shipments, the name of the foreign vendor, supplier, manufacturer,

or other similar party is acceptable (and the address of the foreign vendor, etc., must be a foreign address); by contrast, the identity of a carrier, freight forwarder or consolidator is not acceptable);

(xi) Consignee name and address (M) (for consolidated shipments, the identity of the container station, express consignment or other carrier is sufficient for the master air waybill record; for non-consolidated shipments, the name and address of the party to whom the cargo will be delivered is required, with the exception of "FROB" (Foreign Cargo Remaining On Board); this party need not be located at the arrival or destination port);

(xii) Consolidation identifier (C);

(xiii) Split shipment indicator (C) (see paragraph (d)(3) of this section for the specific data elements that must be presented to CBP in the case of a split shipment);

(xiv) Permit to proceed information (C) (this element includes the permit-to-proceed destination airport (the 3-alpha character ICAO code corresponding to the permit-to-proceed destination airport); and the scheduled date of arrival at the permit-to-proceed destination airport);

(xv) Identifier of other party which is to submit additional air waybill information (C);

(xvi) In-bond information (C) (this data element includes the destination airport; the international/domestic identifier (the in-bond type indicator); the in-bond control number, if there is one (C); and the onward carrier identifier, if applicable (C)); and

(xvii) Local transfer facility (C) (this facility is a Container Freight Station as identified by its FIRMS code, or the warehouse of another air carrier as identified by its carrier code).

(2) *Cargo information from carrier or other filer.* The incoming air carrier must present the following additional information to CBP for the incoming cargo, unless another party as specified in paragraph (c)(1) of this section elects to present this information directly to CBP. Information for all house air waybills under a single master air waybill consolidation must be presented electronically to CBP by the same party. (An "M" next to any listed

data element indicates that the data element is mandatory in all cases; a “C” next to any listed data element indicates that the data element is conditional and must be transmitted to CBP only if the particular information pertains to the inbound cargo):

(i) The master air waybill number and the associated house air waybill number (M) (the house air waybill number may be up to 12 alphanumeric characters (each alphanumeric character that is indicated on the paper house air waybill document must be included in the electronic transmission; alpha characters may not be eliminated));

(ii) Foreign airport of origin (M) (The 3-alpha character ICAO code corresponding to the airport from which a shipment began its transportation by air to the United States (for example, if a shipment began its transportation from Hong Kong (HKG), and it transits through Narita, Japan (NRT), en route to the United States, the airport of origin is HKG, not NRT));

(iii) Cargo description (M) (a precise description of the cargo or the 6-digit Harmonized Tariff Schedule (HTS) number must be provided);

(iv) Total quantity based on the smallest external packing unit (M) (for example, 2 pallets containing 50 pieces each would be considered as 100, not 2);

(v) Total weight of cargo (M) (may be expressed in either pounds or kilograms);

(vi) Shipper name and address (M) (the name of the foreign vendor, supplier, manufacturer, or other similar party is acceptable (and the address of the foreign vendor, etc., must be a foreign address); by contrast, the identity of a carrier, freight forwarder or consolidator is not acceptable);

(vii) Consignee name and address (M) (the name and address of the party to whom the cargo will be delivered in the United States, with the exception of “FROB” (Foreign Cargo Remaining On Board); this party need not be located at the arrival or destination port); and

(viii) In-bond information (C) (this data element includes the destination airport; the international/domestic identifier (the in-bond type indicator); the in-bond control number, if there is

one (C); and the onward carrier identifier, if applicable (C)).

(3) *Additional cargo information from air carrier; split shipment.* When the incoming air carrier elects to transport cargo covered under a single consolidated air waybill on more than one aircraft as a split shipment (see §141.57 of this chapter), the carrier must report the following additional information for each house air waybill covered under the consolidation (An “M” next to any listed data element indicates that the data element is mandatory in all cases; a “C” next to any listed data element indicates that the data element is conditional and must be transmitted to CBP only if the particular information pertains to the inbound cargo):

(i) The master and house air waybill number (M) (The master air waybill number is the IATA standard 11-digit number; the house air waybill number may be up to 12 alphanumeric characters (each alphanumeric number that is indicated on the paper house air waybill must be included in the electronic transmission; alpha characters may not be eliminated));

(ii) The trip/flight number (M);

(iii) The carrier/ICAO code (M) (The approved electronic data interchange system supports both 3- and 2-character ICAO codes, provided that the final digit of the 2-character code is not a numeric value);

(iv) The airport of arrival (M) (The 3-alpha character ICAO code corresponding to the first airport of arrival in the Customs territory of the United States (for example, Chicago O’Hare = ORD; Los Angeles International Airport = LAX));

(v) The airport of origin (M) (The 3-alpha character ICAO code corresponding to the airport from which a shipment began its transportation by air to the United States (for example, if a shipment began its transportation from Hong Kong (HKG), and it transits through Narita, Japan (NRT), en route to the United States, the airport of origin is HKG, not NRT));

(vi) Scheduled date of arrival (M);

(vii) The total quantity of the cargo covered by the house air waybill based on the smallest external packing unit (M) (For example, 2 pallets containing

50 pieces each would be considered as 100, not 2);

(viii) The total weight of the cargo covered by the house air waybill (M) (May be expressed in either pounds or kilograms);

(ix) Description (M) (This description should mirror the precise level of cargo description information that is furnished to the incoming carrier by the other electronic filer, if applicable (see paragraph (c)(1) of this section));

(x) Permit-to-proceed information (C) (This element includes the permit-to-proceed destination airport (the 3-alpha character ICAO code corresponding to the permit-to-proceed destination airport); and the scheduled date of arrival at the permit-to-proceed destination airport);

(xi) Boarded quantity (C) (The quantity of the cargo covered by the house air waybill (see paragraph (d)(3)(vii) of this section) that is included in the incoming portion of the split shipment); and

(xii) Boarded weight (C) (The weight of the cargo covered by the house air waybill (see paragraph (d)(3)(viii) of this section) that is included in the incoming portion of the split shipment).

(e) *Compliance date of this section.* (1) *General.* Subject to paragraph (e)(2) of this section, all affected air carriers, and other parties as specified in paragraph (c)(1) of this section that elect to participate in advance automated cargo information filing, must comply with the requirements of this section on and after March 4, 2004.

(2) *Delay in compliance date of section.* The CBP may delay the general compliance date set forth in paragraph (e)(1) of this section in the event that any necessary modifications to the approved electronic data interchange system are not yet in place. Also, CBP may delay the general compliance date of this section at a given port until CBP has afforded any necessary training to CBP personnel at that port. In addition, CBP may delay implementation if further time is required to complete certification testing of new participants. Any such delay would be the subject of an announcement in the FEDERAL REGISTER.

[CBP Dec. 03–32, 68 FR 68170, Dec. 5, 2003]

**§ 122.49 Correction of air cargo manifest or air waybill.**

(a) *Shortages*—(1) *Reporting.* Shortages (merchandise listed on the manifest or air waybill but not found) shall be reported to the port director by the aircraft commander or agent. The report shall be made:

(i) On a Customs Form 5931, filled out and signed by the importer and the importing or bonded carrier; or

(ii) On a Customs Form 5931, filled out and signed by the importer alone under § 158.3 of this chapter; or

(iii) On a copy of the cargo manifest, which shall be marked “Shortage Declaration,” and must list the merchandise involved and the reasons for the shortage.

(2) *Time to file.* Shortages shall be reported within the time set out in part 158 of this chapter, or within 30 days of aircraft entry.

(3) *Evidence.* The aircraft commander or agent shall supply proof of the claim that:

(i) Shortage merchandise was not imported, or was properly disposed of; or

(ii) That corrective action was taken. This proof shall be kept in the carrier file for one year from the date of aircraft entry.

(b) *Overages*—(1) *Reporting.* Overages (merchandise found but not listed on the manifest or air waybill) shall be reported to the port director by the aircraft commander or agent. The report shall be made:

(i) On a Customs Form 5931; or

(ii) On a separate copy of the cargo manifest which is marked “Post Entry” and lists the overage merchandise and the reason for the overage.

(2) *Time to file.* Overages shall be reported within 30 days of aircraft entry.

(3) *Evidence.* Satisfactory proof of the reasons for the overage shall be kept on file by the carrier for one year from the date of the report.

(c) *Statement on cargo manifest.* If the air cargo manifest is used to report shortages or overages, the Shortages Declaration or Post Entry must include the signed statement of the aircraft commander or agent as follows:

I declare to the best of my knowledge and belief that the discrepancy described herein occurred for the reason stated. I also certify that evidence to support the explanation of

the discrepancy will be retained in the carrier's files for a period of at least one year and will be made available to Customs on demand.

Signature \_\_\_\_\_  
(Aircraft Commander or Agent)

(d) *Notice by port director.* The port director shall immediately notify the aircraft commander or agent of any shortages or overages that were not reported by the aircraft commander or agent. Notice shall be given by sending a copy of Customs Form 5931 to the aircraft commander or agent, or in any other appropriate way. The aircraft commander or agent shall make a satisfactory reply within 30 days of entry of the aircraft or receipt of the notice, whichever is later.

(e) *Correction not required.* A correction in the manifest or air waybill is not required if:

(1) The port director is satisfied that the difference between the quantity of bulk merchandise listed on the manifest or air waybill, and the quantity unladen, is the usual difference caused by absorption or loss of moisture, temperature, faulty weighing at the airport, or other such reason; and

(2) The marks or numbers on merchandise packages are different from the marks or numbers listed on the cargo manifest for those packages if the quantity and description of the merchandise is given correctly.

(f) *Statutes applicable.* If an aircraft arrives in the U.S. from a foreign area with merchandise and unaccompanied baggage for which a manifest or air waybill must be filed, section 584 (concerning manifest violations), Tariff Act of 1930, as amended (19 U.S.C. 1584, applies.

[T.D. 88-12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 98-74, 63 FR 51288, Sept. 25, 1998]

#### § 122.49a Passenger and crew manifests.

(a) *General requirement.* Each air carrier, foreign and domestic, operating a passenger flight in foreign air transportation to the United States, including flights where the passengers and crew have already been pre-inspected or pre-cleared at the foreign location for admission to the United States, must transmit to Customs a passenger mani-

fest and a crew manifest containing the information set forth in paragraph (c) of this section, as required by 49 U.S.C. 44909(c)(1). The electronic transmission of manifest information must be effected through an electronic data interchange system approved by Customs. This information must be transmitted to the U.S. Customs Data Center, Customs Headquarters.

(b) *Passenger and crew manifests separately transmitted; advance receipt by Customs.* For each flight subject to paragraph (a) of this section, the air carrier must separately transmit to Customs the passenger manifest and the crew manifest. The crew manifest must be received in advance of departure from the last foreign port or place. The passenger manifest must be received by Customs no later than 15 minutes after the flight has departed from the last foreign port or place (after the wheels are up on the aircraft and the aircraft is en route directly to the United States).

(c) *Information required—(1) Airline and flight information.* For each passenger manifest and crew manifest relating to a flight falling within the scope of paragraph (a) of this section, the following airline and flight information must be electronically transmitted to Customs: the airline IATA (International Air Transport Authority) code; the flight number (followed by the alpha character "C" in the case of the crew manifest for the flight); the departure location IATA code; the U.S. arrival location(s) IATA code(s); the date of flight arrival in the United States; and whether each passenger and crew member on the flight is destined for the U.S. or in transit through the U.S.

(2) *Identifying information for each passenger or crew member.* In the manner prescribed in paragraph (c)(3) of this section, for each passenger manifest and crew manifest, as applicable, that relates to a flight falling within the scope of paragraph (a) of this section, the following information that identifies each passenger and crew member on the flight must be electronically transmitted to Customs: The full name of each passenger and crew member; the date of birth and citizenship of each passenger and crew member; the

gender of each passenger and crew member; the passport number and country of issuance of the passport of each passenger and crew member if a passport is required for travel; and the United States visa travel document number (located in the machine-readable zone of the visa document) or resident alien card number of each passenger and crew member, as applicable (49 U.S.C. 44909(c)(2)(A)–(E)).

(3) *Use of travel document to obtain data.* Air carriers are to provide the data elements set out in paragraph (c)(2) of this section that describe each passenger and crew member on a flight subject to paragraph (a) of this section by transmitting to Customs one, and only one, travel document per passenger or crew member, selected in the following order of preference: U.S. Alien Registration Card; U.S. Border Crossing Card; U.S. non-immigrant visa; U.S. Refugee Travel Document or Re-Entry Permit; U.S. Passport; or non-U.S. passport. Customs timely receipt of the electronic transmission of the preferred travel document pertaining to a passenger or crew member for a covered flight will be considered as constituting full compliance with the informational requirements of 49 U.S.C. 44909(c)(2)(A)–(E), subject to paragraph (c)(5) of this section.

(4) *Additional information required; travel itinerary of each passenger and crew member.* In addition, for each passenger manifest and crew manifest, as applicable, that relates to a flight falling within the scope of paragraph (a) of this section, air carriers are required to transmit for each passenger and crew member, the foreign airport where they began their air transportation to the United States. Also, for passengers and crew members destined for the United States, the air carrier must designate the airport in the United States where the passenger will be processed through Customs and Immigration formalities. Likewise, for passengers and crew members that are transiting through the United States and not clearing Customs and Immigration formalities, the air carrier bringing them into the United States must transmit the foreign airport of ultimate destination.

(5) *Receipt of all required data elements.* Air carriers will be required to transmit any informational elements required by paragraph (c) of this section which are not contained in the transmitted travel documents by a date that will be announced in the FEDERAL REGISTER.

(d) *Carrier responsibility for comparing information collected with travel document.* The carrier collecting the information described in paragraph (c)(2) of this section is responsible for comparing this information with the related travel document under paragraph (c)(3) of this section, in order to ensure that the information is correct, that the document appears to be valid for travel to the United States, and that the passenger or crew member, as applicable, is the person to whom the travel document was issued.

(e) *Sharing of manifest information with other Federal agencies.* Information contained in passenger and crew manifests for flights subject to paragraph (a) of this section (49 U.S.C. 44909(c)(1)) that is received by Customs electronically may, upon request, be shared with other Federal agencies for the purpose of protecting national security (49 U.S.C. 44909(c)(5)).

[T.D. 02–01, 66 FR 67484, Dec. 31, 2001, as amended by T.D. 02–33, 67 FR 42712, June 25, 2002]

#### **§ 122.49b Passenger Name Record (PNR) information.**

(a) *General requirement.* Each air carrier, foreign and domestic, operating a passenger flight in foreign air transportation to or from the United States, including flights to the United States where the passengers have already been pre-inspected or pre-cleared at the foreign location for admission to the U.S., must, upon request, provide Customs with electronic access to certain Passenger Name Record (PNR) information, as defined and described in paragraph (b) of this section. In order to readily provide Customs with such access to requested PNR information, each air carrier must ensure that its electronic reservation/departure control systems correctly interface with the U.S. Customs Data Center, Customs Headquarters, as prescribed in paragraph (c)(1) of this section.

(b) *PNR information defined; PNR information that Customs may request*—(1) *PNR information defined.* Passenger Name Record (PNR) information refers to reservation information contained in an air carrier's electronic reservation system and/or departure control system that sets forth the identity and travel plans of each passenger or group of passengers included under the same reservation record with respect to any flight covered by paragraph (a) of this section.

(2) *PNR data that Customs may request.* The air carrier, upon request, must provide Customs with electronic access to any and all PNR data elements relating to the identity and travel plans of a passenger concerning any flight under paragraph (a) of this section, to the extent that the carrier in fact possesses the requested data elements in its reservation system and/or departure control system. There is no requirement that the carrier collect any PNR information under this paragraph, that the carrier does not otherwise collect on its own and maintain in its electronic reservation/departure control systems.

(c) *Required carrier system interface with Customs Data Center to facilitate Customs retrieval of requested PNR data.*

(1) *Carrier requirements for interface with Customs.* Within the time specified in paragraph (c)(2) of this section, each air carrier must fully and effectively interface its electronic reservation/departure control systems with the U.S. Customs Data Center, Customs Headquarters, in order to facilitate Customs ability to retrieve needed Passenger Name Record data from these electronic systems. To effect this interface between the air carrier's electronic reservation/departure control systems and the Customs Data Center, the carrier must:

(i) Provide Customs with an electronic connection to its reservation system and/or departure control system. (This connection can be provided directly to the Customs Data Center, Customs Headquarters, or through a third party vendor that has such a connection to Customs.);

(ii) Provide Customs with the necessary airline reservation/departure

control systems' commands that will enable Customs to:

(A) Connect to the carrier's reservation/departure control systems;

(B) Obtain the carrier's schedules of flights;

(C) Obtain the carrier's passenger flight lists; and

(D) Obtain data for all passengers listed for a specific flight; and

(iii) Provide technical assistance to Customs as required for the continued full and effective interface of the carrier's electronic reservation/departure control systems with the Customs Data Center, in order to ensure the proper response from the carrier's systems to requests for data that are made by Customs.

(2) *Time within which carrier must interface with Customs Data Center to facilitate Customs access to requested PNR data.* Any air carrier which has not taken steps to fully and effectively interface its electronic reservation/departure control systems with the Customs Data Center must do so, as prescribed in paragraphs (c)(1)(i)–(c)(1)(iii) of this section, within 30 days from the date that Customs contacts the carrier and requests that the carrier effect such an interface. After being contacted by Customs, if an air carrier determines it needs more than 30 days to properly interface its automated database with the Customs Data Center, it may apply in writing to the Assistant Commissioner, Office of Field Operations (OFO) for an extension. Following receipt of the application, the Assistant Commissioner, OFO, may, in writing, allow the carrier an extension of this period for good cause shown. The Assistant Commissioner's decision as to whether and/or to what extent to grant such an extension is within the sole discretion of the Assistant Commissioner and is final.

(d) *Sharing of PNR information with other Federal agencies.* Passenger Name Record information as described in paragraph (b)(2) of this section that is made available to Customs electronically may, upon request, be shared with other Federal agencies for the purpose of protecting national security (49 U.S.C. 44909(c)(5)). Customs may



## § 122.50

## 19 CFR Ch. I (4–1–05 Edition)

also share such data as otherwise authorized by law.

[T.D. 02–33, 67 FR 42712, June 25, 2002]

### § 122.50 General order merchandise.

(a) Any merchandise or baggage regularly landed but not covered by a permit for its release shall be allowed to remain at the place of unloading until the fifteenth calendar day after landing. No later than 20 calendar days after landing, the pilot or owner of the aircraft or the agent thereof shall notify Customs of any such merchandise or baggage for which entry has not been made. Such notification shall be provided in writing or by any appropriate Customs-authorized electronic data interchange system. Failure to provide such notification may result in assessment of a monetary penalty of up to \$1,000 per bill of lading against the pilot or owner of the aircraft or the agent thereof. If the value of the merchandise on the bill is less than \$1,000, the penalty shall be equal to the value of such merchandise.

(b) Any merchandise or baggage that is taken into custody from an arriving carrier by any party under a Customs-authorized permit to transfer or in-bond entry may remain in the custody of that party for 15 calendar days after receipt under such permit to transfer or 15 calendar days after arrival at the port of destination. No later than 20 calendar days after receipt under the permit to transfer or 20 calendar days after arrival under bond at the port of destination, the party shall notify Customs of any such merchandise or baggage for which entry has not been made. Such notification shall be provided in writing or by any appropriate Customs-authorized electronic data interchange system. If the party fails to notify Customs of the unentered merchandise or baggage in the allotted time, he may be liable for the payment of liquidated damages under the terms and conditions of his custodial bond (see § 113.63(c)(4) of this chapter).

(c) In addition to the notification to Customs required under paragraphs (a) and (b) of this section, the carrier (or any other party to whom custody of the unentered merchandise has been transferred by a Customs authorized permit to transfer or in-bond entry)

shall provide notification of the presence of such unentered and unentered merchandise or baggage to a bonded warehouse certified by the port director as qualified to receive general order merchandise. Such notification shall be provided in writing or by any appropriate Customs-authorized electronic data interchange system and shall be provided within the applicable 20-day period specified in paragraph (a) or (b) of this section. It shall then be the responsibility of the bonded warehouse proprietor to arrange for the transportation and storage of the merchandise or baggage at the risk and expense of the consignee. The arriving carrier (or other party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) is responsible for preparing a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, to cover the proprietor's receipt of the merchandise and its transport to the warehouse from the custody of the arriving carrier (or other party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) (see § 19.9 of this chapter). Any unentered merchandise or baggage shall remain the responsibility of the carrier, pilot, or person in charge of the importing aircraft, or the agent thereof, or party to whom the merchandise has been transferred under a Customs authorized permit to transfer or in-bond entry, until it is properly transferred from his control in accordance with this paragraph. If the party to whom custody of the unentered merchandise or baggage has been transferred by a Customs-authorized permit to transfer or in-bond entry fails to notify a Customs-approved bonded warehouse of such merchandise or baggage within the applicable 20-calendar-day period, he may be liable for the payment of liquidated damages of \$1,000 per bill of lading under the terms and conditions of his international carrier or custodial bond (see §§ 113.63(b), 113.63(c) and 113.64(b) of this chapter).

(d) If the carrier or any other party to whom custody of the unentered merchandise has been transferred by a Customs-authorized permit to transfer or in-bond entry fails to timely relinquish custody of the merchandise to a Customs-approved bonded General Order warehouse, the carrier or other party may be liable for liquidated damages equal to the value of that merchandise under the terms and conditions of his international carrier or custodial bond, as applicable.

(e) If the bonded warehouse operator fails to take possession of unentered and unreleased merchandise or baggage within five calendar days after receipt of notification of the presence of such merchandise or baggage under this section, he may be liable for the payment of liquidated damages under the terms and conditions of his custodial bond (see §113.63(a)(1) of this chapter). If the port director finds that the warehouse proprietor cannot accept the goods because they are required by law to be exported or destroyed (see §127.28 of this chapter), or for other good cause, the goods will remain in the custody of the arriving carrier or other party to whom the goods have been transferred under a Customs-authorized permit to transfer or in-bond entry. In this event, the carrier or other party will be responsible under bond for exporting or destroying the goods, as necessary (see §§113.63(c)(3) and 113.64(b) of this chapter).

(f) In ports where there is no bonded warehouse authorized to accept general order merchandise, or if merchandise requires specialized storage facilities that are unavailable in a bonded facility, the port director, after having received notice of the presence of unentered merchandise or baggage in accordance with the provisions of this section, shall direct the storage of the merchandise by the carrier or by any other appropriate means.

(g) Merchandise taken into the custody of the port director pursuant to section 490(b), Tariff Act of 1930, as amended (19 U.S.C. 1490(b)), shall be sent to a general order warehouse after 1 day after the day the aircraft arrived,

to be held there at the risk and expense of the consignee.

[T.D. 98-74, 63 FR 51288, Sept. 25, 1998, as amended by T.D. 02-65, 67 FR 68033, Nov. 8, 2002]

### Subpart F—International Traffic Permit

#### § 122.51 Aircraft of domestic origin registered in the U.S.

After Customs inspection of the aircraft, passengers, baggage and merchandise at the entry airport, commercial aircraft of domestic origin registered in the U.S. may be allowed to proceed to other airports in the U.S. without permit.

#### § 122.52 Aircraft of foreign origin registered in the U.S.

(a) *Application.* This section applies to commercial aircraft (as defined in §122.1(d)) of foreign origin registered in the U.S. and arriving in the U.S. from a foreign area.

(b) *Aircraft entered as an imported article.* If an aircraft covered by this section is entered as an imported article, and any applicable duty for the aircraft has been paid on a prior arrival, it may be allowed to proceed as other than an imported article. In this instance, the aircraft commander must file a declaration that states the:

- (1) Port where entry was made;
- (2) Date duty, if any, was paid; and
- (3) Number of the entry.

(c) *Aircraft not entered as imported article—(1) Treatment as other than an imported article.* A commercial aircraft covered by this section which has not been entered as an imported article may travel from airport to airport in the U.S. without payment of duty. Each commercial aircraft shall proceed under a permit on Customs Form 7507 or 7509, as provided in §122.54. Treatment of the aircraft as other than an imported article shall continue for so long as the aircraft:

- (i) Is used only for commercial purposes between the U.S. and foreign areas; and
- (ii) Will leave the U.S. for a foreign destination in commercial use or carrying neither passengers nor cargo.

(2) *Treatment as an imported article.* Any aircraft covered by this section

which was not entered as an imported article shall make entry if it:

- (i) Is withdrawn from commercial use between the U.S. and foreign areas; or
- (ii) Is used in the U.S. in a way not reasonably related to efficient commercial use of the aircraft between the U.S. and foreign areas.

(3) *Aircraft damage and duty payment*—(i) *Substantial damage to commercial aircraft.* If an accident causes substantial damage to a commercial aircraft, no entry or duty payment is required for any part of the wreckage.

(ii) *Less than substantial damage and export.* If an accident does not cause substantial damage to a commercial aircraft, salvageable parts of the wrecked aircraft may be exported. In this circumstance, the aircraft, as a whole or in part, is not considered to be withdrawn from commercial use and is not subject to entry or to duty as imported merchandise.

(iii) *Less than substantial damage and no export.* If an accident does not cause substantial damage to a commercial aircraft and the wrecked aircraft or any salvageable part of it is not exported, then:

(A) Entry is required to be made for the damaged aircraft or any salvageable part of it; and

(B) A duty payment, if applicable, based on the condition of the aircraft following the accident, is required.

**§ 122.53 Aircraft of foreign registry chartered or leased to U.S. air carriers.**

Aircraft of foreign registry leased or chartered to a U.S. air carrier, while being operated by the U.S. air carrier under the provisions of the Federal Aviation Administration regulations (14 CFR 121.153), shall be treated as U.S. registered aircraft for purposes of this subpart.

**§ 122.54 Aircraft of foreign registry.**

(a) *Application.* For any commercial aircraft of foreign registry arriving in the U.S., the aircraft commander or agent shall file for an international traffic permit when the aircraft:

- (1) Is not an imported article; and
- (2) Is ferried (proceeds carrying neither passengers nor cargo) from the airport of first arrival to one or more

airports in the U.S. (For permit to proceed with residue cargo, passengers, or crewmembers for discharge in the U.S., see subpart I of this part).

(b) *International traffic permit.* The international traffic permit shall be filed on Customs Form 7507 by the carrier or its agent. Customs Form 7509 may be used if the aircraft arrives directly from Canada on a flight beginning in Canada and ending in the U.S. Either form shall show the following information and must be approved by the appropriate Customs officer:

- (1) Type of aircraft;
- (2) Nationality and registration number of aircraft;
- (3) Name and country of aircraft manufacturer;
- (4) Name of aircraft commander;
- (5) Country from which aircraft arrived;
- (6) Name and location of airport where international traffic permit is issued;
- (7) Date international traffic permit is issued;
- (8) Name and location of airport to which aircraft is proceeding;
- (9) Purpose of stay in the U.S.;
- (10) Signature of Customs officer giving permit.

(c) *Permit on board.* The international traffic permit shall be kept on board the aircraft while in the U.S.

(d) *Intermediate airports.* For each airport at which the aircraft lands, the Customs officer, or airport manager if there is no Customs officer present, shall note the following information on the permit:

- (1) Name and location of the airport;
- (2) Date and arrival time;
- (3) Purpose of the visit;
- (4) Name and location of the next airport to be visited; and
- (5) Date and time of departure.

(e) *Final airport.* The international traffic permit shall be given to the Customs officer in charge at the airport of final clearance for a foreign destination. Before clearance is given, the Customs officer shall make sure that the aircraft was properly inspected by Customs in the U.S.

(f) *Port of issue.* The international traffic permit shall be returned after final clearance to the director of the

port where the permit was issued, to be kept on file.

(g) *Enforcement.* Once the permit to proceed has been issued for an aircraft, the director of the port of issue must receive notice that the aircraft has made final clearance. If notice is not received within 60 days, the port director shall report the matter to the Customs agent in charge of the area for investigation.

### Subpart G—Clearance of Aircraft and Permission To Depart

#### § 122.61 Aircraft required to clear.

(a) All aircraft, except public and private aircraft, leaving the U.S. for a foreign area are required to clear if:

(1) Carrying passengers and/or merchandise for hire; or

(2) Taking aboard or discharging passengers and/or merchandise for hire in a foreign area.

(b) Any aircraft used by members of air travel clubs are required to clear, and foreign aircraft traveling under a permit to proceed shall also clear.

#### § 122.62 Aircraft not otherwise required to clear.

(a) *Bureau of the Census.* Under Bureau of the Census Regulations (15 CFR part 30), aircraft not required to clear by § 122.61 shall obtain permission to depart if carrying merchandise from the U.S. to Puerto Rico or from Puerto Rico to the U.S.

(b) *Bureau of Industry and Security.* Aircraft leaving the U.S. for a foreign area must be cleared by Customs if a validated license from the Bureau of Industry and Security (Department of Commerce) is required for the aircraft under the Export Administration Regulations (15 CFR parts 730 through 774). Aircraft are not required to clear if the Secretary of Commerce issues a permit allowing departure without clearance.

(c) *Department of State.* Aircraft not covered by Export Administration Regulations are subject to the Department of State export licensing authority as set out in 22 CFR parts 121 and 123. Such aircraft may depart from the U.S.

only with the proper Department of State license.

[T.D. 88-12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 93-61, 58 FR 41425, Aug. 4, 1993; CBP Dec. 04-28, 69 FR 52599, Aug. 27, 2004; 69 FR 54179, Sept. 2, 2004]

#### § 122.63 Scheduled airlines.

The aircraft commander or agent shall request clearance or permission to depart for aircraft of scheduled airlines covered by this subpart.

(a) *Clearance at other than airport of final departure.* Aircraft may clear at each airport where merchandise and/or passengers are taken on board for transport outside of the U.S. The clearance applies only to the merchandise and passengers boarding at each place. Clearance shall be requested at the Customs port of entry (regardless of whether it is an international airport) nearest to the place where merchandise and/or passengers are taken on board.

(b) *Clearance at final departure airport.* Clearance or permission to depart may be requested at the Customs port of entry (regardless of whether it is an international airport) nearest the last departure airport.

#### § 122.64 Other aircraft.

Clearance or permission to depart shall be requested by the aircraft commander or agent for aircraft covered by this subpart other than those of scheduled airlines. The request must be made to the director of the port of entry (regardless of whether it is an international airport) nearest the final departure airport.

#### § 122.65 Failure to depart.

Once an aircraft has been cleared or given permission to depart it must depart within 72 hours. The aircraft commander or agent shall report promptly to the port director if departure is delayed beyond or cancelled within 72 hours after the aircraft received clearance or permission to depart.

#### § 122.66 Clearance or permission to depart denied.

If advance electronic air cargo information is not received as provided in § 192.14 of this chapter, Customs and Border Protection may deny clearance

## § 122.71

or permission for the aircraft to depart from the United States.

[CBP Dec. 03-32, 68 FR 68173, Dec. 5, 2003]

### Subpart H—Documents Required for Clearance and Permission to Depart

#### § 122.71 Aircraft departing with no commercial export cargo.

(a) *Application.* This section applies to aircraft departing for foreign territory with no export cargo, but not to those aircraft which are themselves being exported.

(1) Such aircraft may clear by telephone in advance with the director of the port of departure if departing empty or carrying only:

(i) Passengers for hire; or

(ii) Non-commercial cargo for which Shipper's Export Declarations are not required.

(2) If not cleared by telephone, an air cargo manifest containing the following statement, signed by the aircraft commander or agent, shall be submitted to Customs:

I declare to the best of my knowledge and belief that there is no cargo on board this aircraft.

Signature \_\_\_\_\_  
(Aircraft Commander or Agent)

(b) *Timeliness.* The request for telephone clearance must be received by the Customs officer in charge with sufficient time remaining before departure to ensure that Customs may undertake any necessary examination of the aircraft and cargo.

(c) *Documentation.* If clearance is granted by telephone, the aircraft commander is not required to file the documents required by this subpart.

#### § 122.72 Aircraft departing with commercial export cargo.

If an aircraft with export cargo leaves the U.S. for any foreign area, a general declaration, if required, an air cargo manifest and any required Shipper's Export Declarations, shall be filed in accordance with this subpart for all cargo on the aircraft, and for the aircraft itself if exported as merchandise. See § 122.79 for special requirements regarding shipments to U.S. possessions.

## 19 CFR Ch. I (4-1-05 Edition)

#### § 122.73 General declaration and air cargo manifest.

(a) *General declaration*—(1) *Form.* The general declaration shall be on Customs Form 7507 and shall show all information required.

(2) *Preparation and filing.* The aircraft commander or agent shall file two copies of the general declaration with Customs at the departure airport.

(3) *Exception.* A general declaration shall not be required if the air cargo manifest, Customs Form 7509, contains the statement shown in paragraph (b) of this section.

(b) *Air cargo manifest*—(1) *Form.* The air cargo manifest shall be on Customs Form 7509, and shall show all information required. If a general declaration is not presented, the following statement, signed by the aircraft commander or agent, shall appear on the form:

I declare that all statements contained in this manifest, including the account of the cargo on board this aircraft, are complete, exact, and true to the best of my knowledge.

Signature \_\_\_\_\_  
(Aircraft Commander or Agent)

(2) *Preparation and filing.* The aircraft commander or agent shall file two copies of the air cargo manifest with the Customs at the departure airport. Three copies of the air cargo manifest shall be filed if the aircraft is covered by § 122.77(b). The air cargo manifest must be filed in:

(i) Complete form, with all required Shipper's Export Declarations (see § 122.75); or

(ii) Incomplete form (pro forma) under § 122.74.

#### § 122.74 Incomplete (pro forma) manifest.

(a) *Application*—(1) *Shipments to foreign countries.* Except for aircraft bound for foreign locations referred to in paragraph (b) of this section, clearance, or permission to depart may be given to an aircraft bound for a foreign location by the Customs at the departure airport before a complete manifest or all required Shipper's Export Declarations have been filed, if a proper bond is filed on Customs Form 301, containing the bond conditions set forth in subpart G of part 113 of this chapter.

(2) *Shipments to Puerto Rico.* As provided in §122.79(b), any required air cargo manifest or Shipper's Export Declarations for direct flights between the U.S. and Puerto Rico shall be filed with the appropriate Customs officer upon arrival in Puerto Rico. If any required manifest or Shipper's Export Declarations are not filed with the appropriate Customs officer within one business day after arrival in Puerto Rico, a proper bond shall be filed at that time on Customs Form 301, containing the bond conditions set forth in subpart G of part 113 of this chapter.

(b) *Exceptions.* An incomplete manifest will not be accepted:

(1) During any time covered by a proclamation of the President that a state of war exists between foreign nations; or

(2) If the aircraft is departing on a flight from the U.S. directly or indirectly to a foreign country listed in §4.75 of this chapter.

In both cases, a complete air cargo manifest and all required Shipper's Export Declarations shall be filed with the port director before the aircraft will be cleared.

(c) *Filing under bond.* An incomplete set of documents may be filed only when accompanied by the proper bond. Under the bond, a complete set of documents shall be filed within whichever of the following time periods is appropriate:

(1) *Shipments to foreign countries.* All required Shipper's Export Declarations and a complete air cargo manifest shall be filed by the airline not later than the fourth business day after clearance (when clearance is required) or departure (when clearance is not required) of the aircraft.

(2) *Shipments to and from Puerto Rico.* For shipments from the U.S. to Puerto Rico, the complete manifest (when required) and all required Shipper's Export Declarations shall be filed not later than the seventh business day after arrival into Puerto Rico. For shipments from Puerto Rico to the U.S., the complete manifest (when required) and all required Shipper's Export Declarations shall be filed not later than the seventh business day after departure from Puerto Rico.

(3) *Shipments to U.S. possessions.* For shipments between the U.S. or Puerto Rico and possessions of the U.S., a complete manifest and all required Shipper's Export Declarations shall be filed by the airline not later than the seventh business day after departure. See §122.79.

(d) *Declaration required.* A declaration shall be made on the incomplete manifest that:

(1) All required documents will be filed within the 4-day bond period; or

(2) All required documents will be filed within the 7-day bond period.

Once all documents have been filed, a statement as required by §122.75(b) shall be made.

[T.D. 88-12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 93-61, 58 FR 41425, Aug. 4, 1993]

#### § 122.75 Complete manifest.

(a) *Contents.* A complete air cargo manifest shall list all cargo laden, and show for each item the air waybill number, or marks and numbers on packages and the type of goods carried. If an item does not require a Shipper's Export Declaration, it shall be noted on the air cargo manifest.

(1) *Shipments on an air waybill.* A copy of each air waybill on which shipments are listed may be attached to the air cargo manifest, and the number of the air waybill may be listed on the air cargo manifest. The statement "Cargo as per Air Waybill Attached" must appear on the air cargo manifest if this is done.

(2) *Direct departure.* This subsection applies only to direct departures of shipments requiring a Shipper's Export Declaration. A copy of each declaration may be attached to the air cargo manifest, and the number of each declaration shall be listed on the air cargo manifest in the column for air waybill numbers. The statement "Cargo as per Export Declarations Attached" must appear on the manifest if this is done.

(b) *Statement required.* (1) When all required documents are ready for filing, the following statement must appear on the air cargo manifest, or on the general declaration form if an air cargo manifest is not required:

## § 122.76

## 19 CFR Ch. I (4-1-05 Edition)

Attached Shipper's Export Declarations represent a full and complete enumeration and description of the cargo carried in this flight except that listed on the cargo manifest.

(2) If an incomplete set of documents has been filed and is later completed, the following statement shall accompany the Shipper's Export Declarations and any required air cargo manifests:

Attached Shipper's Export Declarations represent a full and complete enumeration and description of the cargo carried on aircraft No. \_\_\_\_\_, Flight No. \_\_\_\_\_ cleared direct for \_\_\_\_\_, on \_\_\_\_\_ except cargo listed on any cargo manifest required to be filed for such flight.

Airline \_\_\_\_\_

Authorized Agent \_\_\_\_\_

### § 122.76 Shipper's Export Declarations and inspection certificates.

(a) *Shipper's Export Declarations*—(1) *Other than shipments to Puerto Rico.* For shipments other than to Puerto Rico, at the time of clearance, the aircraft commander or agent shall file with the port director of the departure airport any Shipper's Export Declarations required by the Bureau of the Census (see 15 CFR part 30).

(2) *Shipments to Puerto Rico.* For flights carrying shipments to Puerto Rico from the U.S., the aircraft commander or agent shall file any Shipper's Export Declarations required by the Bureau of the Census (see 15 CFR part 30) upon arrival in Puerto Rico with the port director there.

(b) *Inspection certificates.* The aircraft commander or authorized agent shall deliver a proper export inspection certificate issued by the Veterinary Service, Animal and Plant Inspection Service, Department of Agriculture (9 CFR part 91), to the Customs officer in charge at the time of departure of any aircraft carrying horses, mules, asses, cattle, sheep, swine, or goats.

[T.D. 93-61, 58 FR 41426, Aug. 4, 1993]

### § 122.77 Clearance certificate.

(a) *Aircraft departing from the U.S.* One copy of the air cargo manifest shall be used as a clearance certificate when endorsed by the port director to show that clearance is granted.

(b) *Scheduled aircraft.* If a scheduled aircraft clears at an airport which is

not the airport at or nearest the place of final take-off from the U.S., two copies of the air cargo manifest shall be filed. One copy shall be used as a clearance certificate when endorsed by the director of the port where clearance is obtained, and the second copy shall be attached to the first for use at subsequent U.S. ports.

### § 122.78 Entry or withdrawal for exportation or for transportation and exportation.

If a shipment is exported under an entry or withdrawal for exportation, or for transportation and exportation, the air cargo manifest, the air waybill, or the consignment note attached to the manifest shall clearly show the following information for each entry or withdrawal:

- (a) Number;
- (b) Date; and
- (c) Class of entry or withdrawal, as follows:
  - (1) Transportation and exportation;
  - (2) Withdrawal for transportation and exportation;
  - (3) Immediate exportation;
  - (4) Withdrawal for exportation; or
  - (5) Withdrawal for transportation.

The name of the port where the entry or withdrawal was filed, if not the port where the merchandise is laden for exportation, shall also appear on the air cargo manifest.

### § 122.79 Shipments to U.S. possessions.

(a) *Other than Puerto Rico.* An air cargo manifest shall be filed for aircraft transporting cargo between the U.S. and U.S. possessions. Shipper's Export Declarations are not required for shipments from the U.S. or Puerto Rico to the U.S. possessions, except to the U.S. Virgin Islands or from a U.S. possession and destined to the U.S., Puerto Rico, or another U.S. possession.

(b) *Puerto Rico.* When an aircraft carries merchandise on a direct flight from the U.S. to Puerto Rico, any required air cargo manifest or Shipper's Export Declarations shall be filed with the appropriate port director at Puerto Rico.

[T.D. 88-12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 93-61, 58 FR 41426, Aug. 4, 1993]

**§ 122.80 Verification of statement.**

Customs officers may verify any of the statements required under this subpart by examining the shipping records of the airline involved.

**Subpart I—Procedures for Residue Cargo and Stopover Passengers****§ 122.81 Application.**

(a) *Aircraft arriving with cargo.* Aircraft arriving in the U.S. from a foreign area with cargo shown on the manifest to be traveling to other airports in the U.S. or to foreign areas may proceed under the provisions of this subpart.

(b) *Aircraft arriving with no cargo.* Aircraft arriving in the U.S. from a foreign area with no cargo on board, and requesting immediate examination and release, may proceed if a bond on Customs Form 301, containing the bond conditions set forth in subpart G of part 113 of this chapter, has been filed and covers the aircraft.

**§ 122.82 Bond requirements.**

A bond on Customs Form 301, containing the bond provisions set forth in subpart G of part 113 of this chapter, shall be filed before an aircraft is given a permit to proceed with residue cargo under this subpart. The bond shall be filed in the correct amount with the director of the entry airport.

**§ 122.83 Forms required.**

(a) *Traveling general declaration and manifest.* When applying for examination and release from an airport or place of entry in the U.S., the aircraft commander or agent shall file a traveling general declaration and manifest. The traveling general declaration and manifest is one certified copy of the original inward general declaration, and each air cargo manifest required when the aircraft entered. This includes air waybills that were part of the manifest.

(b) *Attachments to traveling general declaration and manifest—*(1) *Crew purchase and stores list.* The crew purchase and stores list, if required when the aircraft enters under §§ 122.46 and 122.47, shall be attached to the traveling general declaration and manifest.

(2) *Crew purchases not listed on a crew purchase list.* A crew member's declaration shall be attached to the traveling general declaration and manifest if:

(i) Crew purchases are listed on a crew declaration, Customs Form 5129, instead of on the crew purchase list, under § 122.46(c)(2); and

(ii) The crew member has not left the aircraft with his or her purchase at the first entry port.

The crew member's declaration must be attached at the port where the articles listed on the declaration receive clearance.

(c) *Abstract general declaration and manifest.* The abstract general declaration and manifest shall consist of one copy of the general declaration, and one copy of each manifest (including air waybills) covering residue cargo:

(1) Not yet examined and released by Customs or any other Federal agency; and

(2) To be discharged at another domestic or foreign airport.

An abstract general declaration and manifest need not be filed at the last domestic port of discharge.

(d) *Permit to proceed.* A permit to proceed from one domestic airport to another shall be filed by the aircraft commander or agent with the Customs officer in charge at the clearance airport. The permit to proceed shall include a declaration by the aircraft commander or agent, which shall be signed on entry at the next domestic airport. The permit to proceed and declaration shall state substantially the following:

**PERMIT TO PROCEED FROM ONE AIRPORT  
TO ANOTHER**

Airport of Departure \_\_\_\_\_

Date \_\_\_\_\_

Permission is hereby given aircraft \_\_\_\_\_  
to proceed to \_\_\_\_\_

(Next Domestic Airport)

The aircraft which has arrived from and is destined to the places shown in the general declaration, is proceeding to such places of destination to discharge residue cargo, passengers, or crew members and their purchases, as listed in the attached manifest. Bond was given at the airport of arrival for the cargo retained on board. Items of cargo manifested for delivery at this airport appear to have been landed.

Number of crew members not cleared by Customs \_\_\_\_\_.



## § 122.84

Number of passengers not cleared by Customs \_\_\_\_\_.  
Number of pages of the traveling manifest \_\_\_\_\_.

\_\_\_\_\_  
(Customs Officer and Title)

### DECLARATION ON ENTRY OF AIRCRAFT AT FOLLOWING AIRPORT

Airport of Arrival \_\_\_\_\_

Date \_\_\_\_\_

I, \_\_\_\_\_, commander or authorized agent of the aircraft identified in this document, declare and guarantee that there were not, when such aircraft departed from the airport of \_\_\_\_\_, nor have been since, nor now are, any more or other goods, wares, or merchandise on board than was stated in the attached manifests.

\_\_\_\_\_  
(Signature and Title)

The permit to proceed and declaration must be stamped, mimeographed or printed on:

- (1) The abstract general declaration;
- (2) The traveling general declaration when an abstract general declaration is not required; or
- (3) A separate sheet of paper.

(e) *Permit to proceed for nonscheduled aircraft.* For each permit to proceed issued to a nonscheduled aircraft carrying residue cargo the transit air cargo manifest procedures shall be followed. When the aircraft arrives at the final port, the aircraft commander shall deliver the permit to proceed to Customs.

(f) *Use of form.* When all of the documents required by this section are in order, the permit to proceed shall be dated and signed by the Customs officer in charge at the clearance airport. One copy of the permit to proceed shall be delivered to the aircraft commander or agent with the other required documents, for filing at the next international airport.

[T.D. 88-12, 53 FR 9292, Mar. 22, 1988; T.D. 00-22, 65 FR 16518, Mar. 29, 2000]

## § 122.84 Intermediate airport.

(a) *Application.* The provisions of this section apply at any U.S. airport to which an aircraft proceeds with residue cargo, and passengers, or crewmembers and their purchases not cleared by Customs. They do not apply to aircraft arriving at the last domestic port of discharge.

## 19 CFR Ch. I (4-1-05 Edition)

(b) *Entry.* When an aircraft arrives at the next airport, the aircraft commander or agent shall make entry by filing the:

- (1) Abstract general declaration and manifest;
- (2) Traveling general declaration and manifest; and
- (3) Permit to proceed.

The *Declaration on Entry of Aircraft at Following Airport*, found on the permit to proceed, shall be properly signed before filing for entry.

(c) *Crew declarations.* The declarations and entries, Customs Form 5129, of any crewmembers who leave the aircraft with their purchases at the intermediate airport shall be detached from the traveling general manifest. The declaration and entries are to be detached by the Customs officer in charge and are kept at the airport.

(d) *Departure.* When the aircraft leaves an intermediate airport carrying residue cargo, and passengers or crewmembers and their purchases are not yet cleared by Customs or another interested Federal agency, the procedure is the same as at the first arrival airport. All documents required by this section, except those detached under paragraph (c) of this section, shall be returned to the aircraft commander or agent for filing at the next entry airport.

## § 122.85 Final airport.

When an aircraft enters at the last domestic airport of discharge, the traveling general declaration and manifest shall be filed with Customs and kept at the airport. No abstract general declaration and manifest is required.

## § 122.86 Substitution of aircraft.

(a) *Application.* The residue cargo procedure applies when an airline must substitute aircraft to reach a destination due to weather conditions or operational factors which prevent an aircraft on arrival of the flight at the first port from continuing inbound to interior ports scheduled for that flight.

(b) *Clearance and entry.* Clearance and entry of substitute aircraft is required as provided in this subpart for other aircraft.

(c) *Identification.* An identification of all substitute aircraft shall be clearly

made on all clearance and entry documents.

(d) *Transporting cargo*—(1) *Forwarding*. The carrier may forward all cargo which arrived on one aircraft by transferring it to another aircraft of the same airline to complete the inbound flight. The transfer shall be done under Customs supervision.

(2) *Conditions*. All of the residue cargo from more than one inbound flight of an airline may be laden on one substitute aircraft of the airline. The substitute aircraft shall finish the inbound transport of the residue cargo.

#### § 122.87 Other requirements.

Section 4.85 of this chapter, relating to vessels with residue cargo for domestic ports, applies to aircraft residue cargo, except as stated in this subpart.

#### § 122.88 Aircraft carrying domestic (stopover) passengers.

Airlines that commingle domestic (stopover) passengers (that is, passengers who have already cleared Customs at their port of arrival and are continuing on another aircraft to a second U.S. destination) with international passengers who are continuing on the flight to their port of arrival and have not yet cleared Customs, must comply with certain requirements before being issued a permit to proceed. The carriers requirements are as follows:

(a) The domestic (stopover) passengers must be transported on U.S.-registered aircraft, or foreign-registered aircraft of the same foreign airline that brought them into the U.S.

(b) A \$2.00 charge must be paid for each revenue producing domestic (stopover) passenger reinspected in the U.S. (see § 24.12 of this chapter).

(c) Arrangements must be made for the checked baggage of all passengers requiring inspection on the previously described flights to be off-loaded and made available for examination in the Federal inspection area at the destination port (intermediate or final) where an inspection is to take place.

(d) All stopover passengers shall be notified in writing, prior to boarding, that they will be subject to full reinspection by Customs. This written notification shall contain the following

language: “Notice to all boarding passengers: You are boarding an aircraft on which passengers will be arriving in the U.S. from foreign destinations. These passengers have not yet cleared U.S. Customs. Accordingly, you will be subject to a full reinspection by Customs at your final U.S. port of entry.”

(e) Domestic (stopover) passengers shall be provided a Customs declaration identified by the words “Domestic Flight”. The domestic (stopover) passenger is only required to complete items 1-4 on that declaration.

(f) The carrier shall present to Customs, as otherwise required by law, the permit to proceed and/or the general declaration, clearly stating the number of domestic (stopover) passengers to be reinspected upon arrival at the destination port (intermediate or final) where an inspection of passengers is to take place.

### Subpart J—Transportation in Bond and Merchandise in Transit

#### § 122.91 Application.

This subpart applies to the transportation in bond of merchandise arriving in the U.S. by aircraft and entered:

(a) For immediate transportation to another airport without appraisement; or

(b) For transportation through the U.S. and later exportation by aircraft.

#### § 122.92 Procedure at port of origin.

(a) *Forms required*—(1) *Customs Form 7512 or other document*. Customs Form 7512 or other Customs approved documents, such as an air waybill (see paragraph (a)(3) of this section), shall be used for both entry and manifest. Three copies of the form or other document are required to be filed with Customs at the port of origin for merchandise for immediate transportation without appraisement. Four copies of the form or other document are required when merchandise for transportation and exportation is entered. (See also, §§ 18.11 and 18.20(a) of this chapter). Each copy shall be signed by the carrier or its authorized agent.

(2) *Air Waybill*. An air waybill may be used for both entry and manifest. Three copies of the air waybill are required unless the port director deems

additional copies necessary. Photocopies of the original air waybill are acceptable. Either preprinted stock air waybills or electronically generated air waybills may be used. The air waybill must:

- (i) Contain the information required of a universal air waybill as recognized and accepted by the International Air Transport Association (IATA), be legible and in the English language;
- (ii) Display a unique 11-digit number, the first three digits being the air carrier's identification code;
- (iii) Display the number of packages based on the smallest external packaging unit (*e.g.*, 14 packages is acceptable, 1 pallet is unacceptable);
- (iv) Display the name of the final port of destination in the U.S. or the name of the ultimate country of destination of the cargo indicated by available air carrier shipping documents. The ultimate destination must be shown even though the air transportation may be scheduled to terminate in a country prior to the cargo's final destination;
- (v) Be modified to contain the following information which should appear in a block or attachment in the upper right-hand corner as in this example. The numbers 1-8 correspond to the descriptions that follow; the numbers do not have to appear on the AWB:

|     |  |
|-----|--|
| (1) | Origin                                       |
| (2) | Entry Type                                   |
| (3) | Destination                                  |
| (4) | Importing Carrier/Flight Number/Arrival Date |
| (5) | Bonded Carrier/Exporter                      |
| (6) | Date   |
| (7) | Signature of Carrier's Agent (or Exporter)   |
| (8) | Customs Officer Date                         |

The item numbers correspond to the following information:

*Item 1—Origin*— The numeric port code as listed in Schedule D of the Harmonized Tariff Schedules of the United States, or the port where the in-bond entry is presented.

*Item 2—Entry type*— The appropriate in-bond code number such as I.T./61 for Immediate Transportation, T&E/62 for Transportation and Exportation, and I.E./63 for Immediate Exportation.

*Item 3—Destination*— The numeric port code for the intended port of destination for entry or exportation.

*Item 4—Importing Carrier/Flight Number/Arrival Date*— This information serves to identify the shipment in terms of the inward foreign manifest of the importing carrier. The "Arrival Date" is the date of arrival of the importing conveyance in the U.S. The information must be supplied in all instances.

*Item 5—Bonded Carrier/Exporter*— The bonded carrier or exporter who will be liable for the proper movement, handling, and safekeeping of the merchandise once the in-bond movement is authorized by Customs. If this information is not supplied, the in-bond movement will be carried out under the bond of the importing carrier. (See Item 7 for further information on transfer of liability.)

*Item 6—Date*— The date of the in-bond entry preparation. Since an in-bond entry can be prepared before the date of entry presentation and/or acceptance, and prior to the actual arrival of the importing conveyance, this date should only be used for duty assessment purposes when the date in Item 8 is left blank. If a date is not present, the date of in-bond preparation will be deemed to be the date of arrival.

*Item 7—Signature of Carrier's Agent (or Exporter)*— This signature of the authorized agent of the bonded carrier or exporter identified previously (See Item 5) constitutes acceptance of the liability for the in-bond shipment by the party signing. A signature is required except when the in-bond movement is under the bond of the importing carrier. If unsigned, the submission to Customs of an AWB requesting such a movement is evidence of the acceptance of liability if the AWB is approved by Customs.

*Item 8—Customs Officer/Date*— Signature of the Customs officer who authorizes the initiation of the in-bond movement and the date of such authorization. Customs will check to make sure

merchandise is released only to a bonded carrier. The date is used to start the time limit for completion of the in-bond movement and for consumption entry purposes in accord with §141.69(b) of this chapter. Customs authorization procedures which use a perforation device are acceptable in lieu of the appropriate Customs signature. The port director will determine whether a signature will be required in this block prior to the time that the cargo is allowed to move.

(b) *Delivery of Customs form to carrier*—(1) *Merchandise entered for immediate transportation without appraisal.* When merchandise is entered for immediate transportation without appraisal, two copies of Customs Form 7512 or other Customs approved document shall be delivered to the carrier.

(2) *Merchandise entered for transportation and exportation.* When merchandise is entered for transportation and exportation, one copy of Customs Form 7512 and any other Customs approved document shall be delivered to the carrier.

(3) *After delivery.* After delivery, the forms or other document shall accompany the merchandise to the port of destination or exportation.

(c) *Receipt and supervision.* The agent of a bonded air carrier shall give a receipt for any merchandise delivered to it for transportation in bond, and no supervision of the lading of the merchandise on the transporting aircraft shall be required.

(d) *Split shipment*—(1) *Departure within 24 hours.* Merchandise covered by a single entry and manifest (Customs Form 7512 or other Customs approved document) may be sent to the destination airport on one or more aircraft. A separate manifest for each aircraft is not required if the whole shipment is sent within a single 24-hour period.

(2) *Departure not within 24 hours.* If any part of a shipment is sent more than 24 hours after the first part was sent, the entry and manifest copy which accompanies the first shipment shall state that the rest of the shipment will follow by separate aircraft. A single manifest shall be prepared for each part of the shipment sent by separate aircraft. The manifest shall be

used as notice of each arrival at the destination airport.

(e) *Transshipment.* Merchandise sent under bond may be transferred at an intermediate airport to one or more aircraft of the same airline. This may be done without Customs supervision and notice of the transfer is not required. If merchandise covered by one entry and manifest is transferred to more than one aircraft, paragraph (d) of this section applies.

(f) *Sealing not required.* The sealing of aircraft, aircraft compartments carrying bonded merchandise, or the cording and sealing of bonded packages carried by the aircraft, is not required.

(g) *Warning labels.* The carrier shall supply and attach the warning label, as described in §18.4(e) of this chapter, to each bonded package.

[T.D. 88-12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 92-82, 57 FR 38276, Aug. 24, 1992; T.D. 00-22, 65 FR 16518, Mar. 29, 2000]

#### § 122.93 Procedure at destination or exportation airport.

(a) *Delivery to port director.* When a bonded shipment arrives at the destination or exportation airport, the aircraft commander or agent shall deliver one copy of the entry and manifest (Customs Form 7512 or other Customs approved document) covering the shipment to the port director of that airport as notice of arrival. If the shipment was sent by separate aircraft more than 24 hours after the first part of the shipment was sent, then a manifest for each part of the shipment shall be delivered to the port director.

(b) *Delivery to consignee.* When the merchandise is sent under an entry for immediate transportation without appraisal, one copy of the manifest covering the merchandise shall be delivered by the carrier to the consignee. This copy is used to make entry, and may also be used as a carrier certificate as provided in §141.11(a)(4) of this chapter.

[T.D. 88-12, 53 FR 9292, Mar. 22, 1988; T.D. 00-22, 65 FR 16518, Mar. 29, 2000]

#### § 122.94 Certificate of lading for exportation.

(a) *Required filing.* This section applies to merchandise entered for transportation and exportation by aircraft.

## § 122.95

A certificate of lading for exportation and a Customs Form 7512 or other Customs approved document (see § 122.93 of this subpart) shall be filed when the merchandise reaches the final departure airport. The form shall be filled out and signed at the place where aircraft clearance for the merchandise is given.

(b) *Clearance not at place of final departure.* If an aircraft is cleared at a place other than the place of final departure from the U.S., the aircraft commander or its authorized agent shall:

(1) Promptly report arrival of any bonded merchandise for export to the Customs officer in charge at that place; and

(2) Submit to the Customs officer in charge the certificate received at the place the merchandise was taken on board. The clearance certificate is kept by the Customs officer in charge until departure.

This procedure shall be followed at each place of landing before final departure.

[T.D. 88-12, 53 FR 9292, Mar. 22, 1988; T.D. 00-22, 65 FR 15618, Mar. 29, 2000]

## § 122.95 Other provisions.

Part 18 of this chapter (Transportation in Bond and Merchandise in Transit) applies to the transportation of merchandise under this subpart unless stated otherwise.

## Subpart K—Accompanied Baggage in Transit

### § 122.101 Entry of accompanied baggage.

Passengers who enter the U.S. on one aircraft and depart to a foreign area on another aircraft with accompanying baggage shall either:

(a) Submit their baggage to Customs for inspection; or

(b) Arrange with the importing carrier for the baggage to be processed under regular in-transit procedures.

When passengers choose not to have access to their baggage while in the U.S., the baggage shall be listed on the Air Cargo Manifest as provided in § 122.48.

## 19 CFR Ch. I (4-1-05 Edition)

### § 122.102 Inspection of baggage in transit.

(a) General baggage in transit may be inspected upon arrival, while in transit, and upon exportation. Carriers shall present in-transit baggage for inspection at any time found necessary by the port director.

(b) In-transit baggage shall be presented to a Customs officer for inspection and clearance before the baggage can be delivered to a passenger while in the U.S.

## Subpart L—Transit Air Cargo Manifest (TACM) Procedures

### § 122.111 Application.

Cargo (including manifested baggage) which arrives and is transported under Customs control in, through, or from, the U.S. may be transported in bond under this subpart. If cargo is not transported under this subpart, it shall be transported under other provisions of this chapter. (See subparts I and J of this part, and parts 18 and 123 of this chapter.)

### § 122.112 Definitions.

The following definitions apply in this subpart:

(a) *Transit air cargo.* “Transit air cargo” is cargo, including manifested baggage, transported under the requirements of this subpart.

(b) *Port of arrival.* The “port of arrival” is the port in the U.S. where imported cargo must be documented for further transportation under this subpart.

(c) *Transfer or transferred.* “Transfer or transferred” means the change of documentation of cargo to transit air cargo for transportation. The terms also include the physical movement of the cargo from one carrier to another, and thereafter by air or surface movement to the port of destination.

(d) *Transit air cargo manifest.* “Transit air cargo manifest” is used in this subpart as the shortened title for the transportation entry and transit air cargo manifest.

**§ 122.113 Form for transit air cargo manifest procedures.**

A manifest on Customs Form 7509 is required for transit air cargo, as provided in § 122.48(c) of this part. The words “Transportation Entry and Transit Air Cargo Manifest” shall be printed, stamped or marked on the form and on all copies of the form required for transit air cargo movement.

**§ 122.114 Contents.**

(a) *Form duplicates original manifest.* Each transit air cargo manifest shall be a duplicate of the sheet presented as part of the cargo manifest for the aircraft on which the cargo arrived in the U.S.

(b) *Shipments shown on manifest—(1) Country of exportation.* Each transit air cargo manifest sheet may list:

- (i) Only air cargo shipments from one exporting country, with the name of the country shown in the heading; or
- (ii) Air cargo shipments from several exporting countries, with the name of the exporting country shown in the “Nature of Goods” column.

(2) *Shipment to same port.* Each transit air manifest sheet may list only those shipments manifested by way of the port of arrival for:

- (i) The same Customs port of destination;
- (ii) The same Customs port for later exportation; or
- (iii) Direct exportation from the port of arrival.

(c) *Information required.* Each air cargo manifest sheet shall show:

- (1) The foreign port of lading;
- (2) The date the aircraft arrived at the port of arrival;
- (3) Each U.S. port where Customs services will be necessary due to transit air cargo procedures; and

(4) The final port of destination in the U.S., or the foreign country of destination, for each shipment. The foreign country destination shown on the manifest must be the final destination, as shown by airline shipping documents, even though airline transport may be scheduled to end before the shipment arrives at the final destination.

(d) *Corrections.* If corrections in the route shown on the original manifest for the cargo are required at the port of

arrival to make a manifest sheet workable as a transit air cargo manifest, the director of the port of arrival may allow the corrections.

**§ 122.115 Labeling of cargo.**

A warning label, as required by § 18.4(e) of this chapter, shall be attached to all transit air cargo not directly exported from the port of arrival before the cargo leaves the port of arrival.

**§ 122.116 Identification of manifest sheets.**

When the original cargo manifest for the aircraft on which the cargo arrives is presented by the aircraft commander or its authorized agent at the port of arrival, a manifest number will be given to the aircraft entry documents by Customs. The number given shall be used by the airline to identify all copies of the transit air cargo manifest. All copies of the manifest shall be correctly numbered before cargo will be released from the port of arrival as transit air cargo.

**§ 122.117 Requirements for transit air cargo transport.**

(a) *Transportation—(1) Port to port.* Transit air cargo may be carried to another port only when a receipt is given, as provided in paragraph (b) of this section. The receipt may be given only to an airline which:

- (i) Is a common carrier for the transportation of bonded merchandise; and
- (ii) Has the required Customs bond on file.

(2) *Exportation from port of arrival.* Transit air cargo may be exported from the port of arrival only if covered by a bond on Customs Form 301, containing the bond conditions set forth in subpart G of part 113 of this chapter, as provided in § 18.25 of this chapter.

(b) *Receipt—(1) Requirements.* When air cargo is to move from the port of arrival as transit air cargo, a receipt shall be given. The receipt shall be made by the airline responsible for transport or export within the general order period (see § 122.50).

(2) *Contents.* The receipt shall appear on each copy of the transit air cargo manifest, clearly signed and dated if required, in the following form:

## § 122.118

Received the cargo listed herein for delivery to Customs at the port of destination or exportation shown above, or for direct exportation.

Name of carrier (or exporter)

Attorney or agent of carrier (or exporter)

Date

(c) *Responsibility for transit air cargo—*  
(1) *Direct exportation.* The responsibility of the airline exporting transit air cargo for direct exportation begins when a receipt, as provided in paragraph (b) of this section, is presented to Customs.

(2) *Other than direct exportation.* When the transit air cargo is not for direct exportation, the responsibility of the airline receiving the cargo begins when a receipt, as provided in paragraph (b) of this section, is presented to Customs.

(3) *Carting.* When carting is used to deliver transit air cargo to receiving airlines, the importing airline is responsible for the cargo under its own bond until a receipt is filed by the receiving airline. This does not apply when the carting is done under part 112 of this chapter, at the expense of the parties involved.

(4) *Importing airlines.* An importing airline which has qualified as a carrier of bonded merchandise, whether registered in the U.S. or a foreign area, may:

- (i) Give a receipt for the air cargo;
- (ii) File an appropriate bond; and
- (iii) Deliver the cargo to an authorized domestic carrier for in-bond transportation from the port of arrival. The importing carrier's bond covers the transportation.

(d) *Split shipments.* A receipt shall be given by one airline for all of the cargo shipments listed on one transit air cargo manifest sheet. Cargo shipments so listed shall be transported from the port of arrival on one aircraft or carrier unless the use of more than one aircraft or carrier would be allowed:

- (1) By §122.92(d) under a single combined entry and manifest;
- (2) By §122.118(d); or
- (3) By §122.119(e), permitting the use of a surface carrier for transport.

## 19 CFR Ch. I (4–1–05 Edition)

Otherwise, all shipments on the transit air cargo manifest shall be separately documented and transported under the regular procedures for transportation of merchandise in bond (See subpart J).

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 98–74, 63 FR 51289, Sept. 25, 1998]

### § 122.118 Exportation from port of arrival.

(a) *Application.* Transit air cargo may be transferred for exportation from any port of arrival under this section. The port director may require any supervision necessary to enforce the regulations of other Federal agencies.

(b) *Time.* Transit air cargo shall be exported from the port of arrival within 10 days from the date the exporting airline receives the cargo. After the 10-day period, the individual cargo shipments must be made the subject of individual entries, as appropriate.

(c) *Transit air cargo manifest copies.* Three copies of the transit air cargo manifest shall be filed with Customs.

(1) *Review copy.* The importing airline shall file a copy of each transit air cargo manifest sheet covering any cargo shipment that will be transferred for direct exportation. This filing shall be made as soon as the exporting airline has been chosen. The exporting airline need not give receipt on the review copy for the cargo to be transferred, but the name of the exporting airline shall be placed on the copy.

(2) *Exportation copy.* The exportation copy shall be filed by the exporting airline when clearance documents are presented to Customs.

(3) *Clearance copy.* The clearance copy shall be filed with the exporting aircraft's clearance documents.

The exportation and clearance copies shall show the exporting airline's receipt for the cargo, aircraft number, flight number, and the date.

(d) *Direct export on different aircraft.* Transit air cargo shipments which are listed on one aircraft transit air cargo manifest sheet may be directly exported on different aircraft of the exporting airline. If this occurs, two additional copies of the transit air cargo manifest shall be filed for each shipment or group of shipments transported in other aircraft. Each copy of

the transit air cargo manifest shall be clearly marked to show which shipment or shipments listed are covered by the manifest copy.

(e) *Direct export by another airline.* If shipments listed on one transit air cargo manifest sheet are not exported from the same port on the same airline, separate export entries on Customs Form 7512, as required by § 18.25 of this chapter, shall be filed.

(f) *Post entered air cargo.* Air cargo not listed on the manifest (i.e., over-ages) which has been post entered under § 122.49(b) may be exported from the port of origin under this subpart. If this occurs, four copies of the air cargo manifest, Customs Form 7509, marked “Post Entry”, shall be provided. All requirements of § 122.44(b) shall be followed in using this procedure.

(g) *Review.* The review copy of the transit air cargo manifest sheets must be reviewed by Customs as required for the carrier manifest copy in § 122.120(g). The reviewing officer shall take the proper action if a license is necessary for any cargo. The exporting airline shall be notified that any transit air cargo which is not covered by the required license must be placed under constructive Customs custody in a special area of the airline’s terminal until the license is obtained.

#### § 122.119 Transportation to another U.S. port.

(a) *Application.* Air cargo shipments may be transferred for transportation as transit air cargo from the port of arrival to another port in the U.S. under this section. The director of the port of arrival may require Customs supervision of the transfer.

(b) *Time.* Transit air cargo traveling to a final port of destination in the U.S. shall be delivered to Customs at its destination within 15 days from the date the receiving airline gives the receipt for the cargo at the port of arrival.

(c) *Transit air cargo manifest copies.* Four copies of the transit air cargo manifest, including a carrier manifest copy, shall be filed by the airline giving a receipt for moving the cargo shipments to their destination. The permit copy is used and kept by Customs at the port of arrival.

(d) *Failure to deliver on time—(1) Procedure.* If transit air cargo does not arrive at the destination port on time, the director of the port of arrival shall take action as provided in §§ 18.6 and 18.8 of this chapter. The amount of duty and tax shall be decided at the port of arrival on the basis of information:

- (i) On the permit copy kept at the port of arrival; and
- (ii) Obtained from the carriers as necessary.

The director of the port of arrival shall notify the airline that presented a receipt for the cargo that there has been a failure to deliver.

(2) *Responsibility of airline.* When the airline that presented a receipt for the cargo receives notice of discrepancies, the airline shall answer within 90 days of the date of such notice to the director of the port of arrival. The answer shall provide any information or documents related to the value and description of the cargo involved that the receipting airline and the importing airline can produce.

(e) *Surface movement to port of destination.* If an aircraft arrives at the port of arrival with cargo to be carried as transit air cargo, the cargo may be transferred to another carrier for surface movement to the port of destination. The transfer is allowed under the following conditions:

- (1) The bond of the party receiving the cargo for surface movement must cover the transfer and surface movement;
- (2) The description of the cargo on the transit air cargo manifest must be complete;
- (3) The entire shipment listed in the transit air cargo manifest must be shipped from the port of arrival to the port of destination by the same surface carrier; and
- (4) The requirements of § 122.114(b) must be followed.

[T.D. 88–12, 54 FR 9292, Mar. 22, 1988; T.D. 00–22, 65 FR 16518, Mar. 29, 2000]

#### § 122.120 Transportation to another port for exportation.

(a) *Application.* Air cargo may be transferred as transit air cargo at the



port of arrival for transportation to another port in the U.S. and later exportation under this section.

(b) *Supervision*—(1) *From port of arrival to exportation port.* The director of the port of arrival shall order any supervision found necessary for the transfer of transit air cargo for transportation to another port for export.

(2) *At exportation port.* Customs shall be notified far enough in advance to be able to make any required supervision of the lading of cargo, and to enforce any other Federal agency requirements, when transit air cargo is ready for lading on the exporting aircraft.

(c) *Time.* Transit air cargo covered by this section shall be delivered to Customs at the port of exportation within 15 days from the date of receipt by the forwarding airline.

(d) *Transit air cargo manifest copies.* Five copies of the transit air cargo manifest shall be filed with Customs.

(1) *Port of arrival.* Two copies of the transit air cargo manifest, marked separately as “permit” and “control” copies, shall be filed with Customs at the port of arrival. Filing shall be made when the arriving aircraft enters, or before the general order period ends, by the airline which presents a receipt to transport the cargo from the port of arrival to the port of destination.

(2) *Port of exportation.* Three copies of the transit air cargo manifest shall be filed at the port of exportation.

(i) *Carrier manifest copy.* The carrier manifest copy shall be attached to the listing of cargo shipments and submitted when the cargo arrives at the exportation port.

(ii) *Exportation and clearance copies.* Two copies, marked separately as “exportation” and “clearance” copies, shall be filed with Customs at the exportation port.

(e) *Delivery to exporting airline.* When the transit air cargo arrives at the exportation port, it may be delivered directly to the exporting carrier, together with the exportation and clearance copies. The name of the exporting carrier shall be clearly noted on the carrier manifest copy, which shall then be delivered to Customs.

(f) *Storage by exporting airline.* The exporting carrier shall keep all cargo listed on the transit air cargo manifest

in one storage space. This storage space shall be separate from the area in which special shipments which require a license under paragraph (g) of this section are stored.

(g) *Export license*—(1) *Review.* A Customs officer shall review the carrier manifest copy of the transit air cargo manifest to make sure that the export licensing requirements of other Federal agencies have been followed.

(2) *Information inadequate.* If the manifest information is not enough for Customs to determine that a license or other requirement applies, then the transit air cargo shall be checked by examination, or by inspection of the air waybills or attached invoices.

(3) *When license or other requirement applies.* The exporting airline shall be notified at once if Customs finds that the shipment cannot be exported without a license or other approval. The shipment shall then be put under constructive Customs custody in a special area set aside for the shipment in the exporting airline’s cargo terminal.

(h) *Filing of exportation and clearance copies*—(1) *Information.* When filed with Customs, the exportation and clearance copies of the transit air cargo manifest shall each show:

- (i) The aircraft number;
- (ii) The aircraft flight number; and
- (iii) The date.

(2) *Filing.* The exporting airline shall file the exportation and clearance copies before the aircraft that carries the transit air cargo departs. The clearance copies shall be grouped together and not mixed in with other outward manifest sheets. The exportation copies shall be grouped together, and kept separate from the outward clearance documents.

(i) *Cargo not laden at same airport by same airline.* If all the cargo listed on one transit air cargo manifest sheet is not laden for exportation from the same U.S. airport by the same airline, then separate entries on Customs Form 7512 are required for each cargo shipment listed:

(1) For transportation and exportation under subpart J of this part; or

(2) For direct exportation under § 18.25 of this chapter.

(j) *Cargo laden on more than one aircraft of same airline.* When any cargo

shipment listed on the same transit air cargo manifest must be exported on more than one aircraft of the same airline, § 122.118(d) applies.

(k) *Failure to deliver.* If all or part of the cargo listed on the transit air cargo manifest is not accounted for with an exportation copy within 40 days, the director of the port of arrival shall take action as provided in § 122.119(d).

[T.D. 88-12, 53 FR 9292, Mar. 25, 1988, as amended by T.D. 98-74, 63 FR 51289, Sept. 25, 1998; T.D. 00-22, 65 FR 16518, Mar. 29, 2000]

### Subpart M—Aircraft Liquor Kits

#### § 122.131 Application.

(a) *Liquor and tobacco.* Subpart M applies to:

(1) Duty-free and tax-free liquor and tobacco; and

(2) Duty-paid and tax-paid liquor and tobacco which has been placed in the same liquor kit as duty-free and tax-free liquor and tobacco.

(b) *Aircraft.* Subpart M applies to all commercial aircraft on domestic or foreign flights operating into, from and between U.S. airports, which are carrying:

(1) Duty-free and tax-free liquor and tobacco withdrawn from bond under section 309, Tariff Act of 1930, as amended (19 U.S.C. 1309); or

(2) Other liquor or tobacco on which duty or taxes have not been paid.

This includes any aircraft carrying duty-free and tax-free liquor under 19 U.S.C. 1309, or other Federal law, although the aircraft is not required to enter, clear or report arrival.

#### § 122.132 Sealing of aircraft liquor kits.

(a) *Sealing required.* Aircraft liquor kits shall be sealed on board the aircraft by crewmembers before the aircraft lands in the U.S. The liquor kits shall be kept under seal while on the ground unless taken to an authorized airline in-bond liquor storeroom.

(b) *Exception.* When an aircraft is traveling between airports in the U.S., in a trade for which duty-free and tax-free liquor is used during flight, sealing the liquor kits on board during transporting stopovers is not required if:

(1) The liquor kits are kept on board the aircraft; and

(2) The port director finds that sealing is not required for revenue protection.

(c) *Seals to be used.* Aircraft liquor kits shall be sealed with serially numbered, Customs approved seals. The airline shall use seals supplied by an approved manufacturer, as provided in part 24 of this chapter. A small number of seals may be obtained from the port director.

(d) *Removing seals.* When sealed liquor kits are on the ground, the Customs seals may be broken only by:

(1) A Customs officer; or

(2) Authorized airline personnel, in an authorized airline in-bond liquor storeroom.

(e) *Resealing.* When a Customs officer breaks the seal of a liquor kit to check the contents, the action shall be recorded on the liquor kit stores list, and the liquor kit must be resealed with an approved seal.

#### § 122.133 Stores list required on arrival.

(a) *When required, contents.* Three copies of an incoming stores list shall be prepared for each liquor kit on board before an aircraft lands. The incoming stores list shall state for each type of liquor and bottle size:

(1) Number of full bottles;

(2) Number of partially filled bottles; and

(3) Total number of bottles.

If the carrier chooses not to state the type of liquor for each size bottle, any duty or taxes assessed for any shortage shall be set at the highest rate available for the alcoholic beverages in the kit.

(b) *Disposition of stores list copies.* One copy of the incoming stores list shall be placed in the liquor kit before it is sealed. The remaining two copies shall be used as follows:

(1) One copy shall be filed with the inward cargo manifest; and

(2) One copy shall be kept for filing with the outward cargo manifest if the liquor kit was laden for export.

(c) *For aircraft not required to enter and/or clear.* If an aircraft is not required to enter and/or clear:

## § 122.134

## 19 CFR Ch. I (4–1–05 Edition)

(1) One copy shall be given to the Customs officer upon arrival; and

(2) One copy shall be kept to be given to the Customs officer before departure of the aircraft.

(d) *When stores list not prepared.* When a complete stores list is not prepared before landing, liquor kits must be sealed on board, and the seal number shall be recorded on the stores list. When the aircraft lands, the liquor shall be taken at once to the Customs office and the stores list shall be completed by crew members under Customs supervision.

### § 122.134 When airline does not have in-bond liquor storeroom.

(a) *Handling of liquor kits.* An aircraft may land at an airport where the airline involved does not have an authorized in-bond liquor storeroom. When this occurs, the liquor kits, under any supervision found necessary by the port director, may be:

(1) Kept on board the aircraft;

(2) Removed and replaced upon the aircraft; or

(3) Removed and replaced aboard another aircraft.

(b) *Sealing of kits.* Aircraft liquor kits covered by this section shall remain sealed until departure. Customs officers may remove the seal to check the contents of the liquor kits, but shall reseal the kits as provided in § 122.132(e).

(c) *Restocking.* Additional amounts of duty-free and tax-free liquor and tobacco obtained in the U.S. shall be laden in a separate container on any aircraft covered by this section. The lading shall be done under any supervision the port director finds necessary. The additional liquor and tobacco shall be shown on separate outward stores lists.

### § 122.135 When airline has in-bond liquor storeroom.

(a) *Restocking.* Liquor kits on board an aircraft landing at an airport where the airline involved has an authorized in-bond liquor storeroom may be removed and restocked in the storeroom.

(b) *Inventory record.* Each authorized airline in-bond liquor storeroom shall keep an inventory record in a form that satisfies the port director. The in-

ventory record shall account for the receipt and use of all aircraft liquor and tobacco stores on which duty and/or tax has not been paid.

(c) *Airline employees.* Any airline which has an authorized in-bond liquor store room at an airport shall give the port director:

(1) A list of names of all airline employees authorized to break Customs seals on liquor kits in the in-bond liquor storeroom; and

(2) Signature samples of the authorized employees.

(d) *Opening of aircraft liquor kits.* Aircraft liquor kits received in an authorized storeroom shall be opened only by authorized airline employees, or by Customs officers.

(e) *Contents of liquor kits.* The employees who break the seals on aircraft liquor kits shall check the contents at once. The employees shall immediately report to the port director any:

(1) Evidence of seal tampering;

(2) Difference between the seal numbers on the liquor kits and those recorded on the stores list; and

(3) Differences in quantity as shown on the stores list.

(f) *Handling the liquor kits—(1) Partial bottles.* Partial bottles of liquor may be removed from incoming liquor kits and kept in the in-bond liquor storeroom to be destroyed or combined with other partial bottles. This may be done only under Customs supervision. The costs of Customs supervision shall be paid by the airline.

(2) *Exportation.* The contents of incoming liquor kits may be commingled to restock outbound liquor kits. The commingling must take place in the airline in-bond liquor storeroom, using liquor bottles on which the seal has not been broken.

(3) *Sealing.* All liquor kits shall be sealed as provided in § 122.132(a) before removal from the in-bond liquor storeroom. All seal numbers shall be listed on an outgoing stores list.

### § 122.136 Outgoing stores list.

(a) *Preparation.* Two copies of a serially numbered outgoing stores list shall be prepared by the airline for all liquor and tobacco withdrawn from bonded or non-tax-paid stock and added to liquor kits. The outgoing stores list

shall show the total number of bottles for each type liquor, the brand, and the size of each bottle.

(b) *Use of copies.* The two copies of the outgoing stores list shall be used as follows:

(1) One copy shall be placed and kept in the outgoing kits until the aircraft leaves the U.S.; and

(2) One copy must be filed either with the outgoing cargo manifest (for aircraft required to clear) or with Customs before departing, as provided in § 122.133(c).

In both cases, the third copy of the inward stores list shall be filed with the outgoing stores list. (See § 122.133(c)).

#### § 122.137 Certificate of use.

Any liquor or tobacco withdrawn from the in-bond storeroom and shown on the outgoing stores list shall be recorded, when exported, on a certificate of use prepared by the airline.

### Subpart N—Flights to and From the U.S. Virgin Islands

#### § 122.141 Definitions.

Under subpart N, the following definitions apply:

(a) *United States.* The term “U.S.” includes the several States, the District of Columbia and Puerto Rico.

(b) *Foreign area.* The term “foreign area” means any area other than the several States, the District of Columbia and Puerto Rico.

#### § 122.142 Flights between the U.S. Virgin Islands and a foreign area.

(a) *Aircraft arriving in the U.S. Virgin Islands.* Aircraft arriving in the U.S. Virgin Islands from a place other than the U.S. are governed by the provisions of this part which apply to aircraft arriving in the U.S. from a foreign area.

(b) *Aircraft leaving the U.S. Virgin Islands.* Aircraft leaving the U.S. Virgin Islands for a place other than the U.S. are governed by the provisions of this part that apply to aircraft leaving the U.S. for a foreign area.

#### § 122.143 Flights from the U.S. to the U.S. Virgin Islands.

(a) *In general.* Aircraft on flights from the U.S. to the U.S. Virgin Is-

lands are governed by the provisions of this part that apply to aircraft on a flight within the U.S.

(b) *Bureau of the Census.* When Bureau of the Census regulations (15 CFR part 30) apply to aircraft carrying merchandise to the U.S. Virgin Islands from the U.S., permission to depart must be obtained from the port director. Permission to depart shall not be given unless:

(1) A complete manifest and Shipper's Export Declarations as required by 15 CFR part 30 are filed; or

(2) An incomplete manifest under 15 CFR 30.24 is filed and the complete manifest and Shipper's Export Declarations are filed within 7 business days after departure.

#### § 122.144 Flights from the U.S. Virgin Islands to the U.S.

(a) *Aircraft not inspected.* This paragraph applies to aircraft departing from the U.S. Virgin Islands and arriving in the U.S., without having been inspected prior to departure.

(1) *On departure.* Aircraft leaving the U.S. Virgin Islands for the U.S. are governed by the provisions of this part that apply to aircraft leaving the U.S. for a foreign area.

(2) *On arrival.* Aircraft departing from the U.S. Virgin Islands and arriving in the U.S. are governed by the provisions of this part that apply to aircraft arriving in the U.S. from a foreign area.

(b) *Supervision.* When aircraft are inspected by Customs in the U.S. Virgin Islands, the port director may order any supervision found necessary to protect the revenue and enforce the laws administered by Customs. This includes the collection of duty and taxes on articles bought in the U.S. Virgin Islands.

(c) *Procedure.* When an aircraft that was inspected in the U.S. Virgin Islands arrives in the U.S. from the U.S. Virgin Islands, the aircraft commander must be able to give evidence of the inspection to Customs on request. Evidence of the inspection shall be given in the following manner:

(1) A certificate on Customs Form 7507 shall be presented for aircraft registered in the U.S.:

(i) Of domestic origin; or

## § 122.151

(ii) Of foreign origin, if duty has been paid and the aircraft is proceeding carrying neither passengers nor cargo, or with cargo and/or passengers solely from the U.S. Virgin Islands.

Two copies of the certificate shall be given to the inspecting Customs officers in the U.S. Virgin Islands by the aircraft commander. The certificate shall be marked with the port and date of inspection, and must be signed by the inspecting officer. The original of the certificate must be returned to the aircraft commander, who must keep the certificate for a reasonable time after the end of the flight to the U.S. If requested, the certificate shall be presented to Customs. The certificate may be destroyed or disposed of after a reasonable time at the discretion of the aircraft commander or agent.

(2) A permit to proceed on Customs Form 7507 shall be presented for aircraft registered in the U.S. which are:

- (i) Of foreign origin;
- (ii) Not duty paid; and
- (iii) Proceeding carrying neither passengers nor cargo.

The permit to proceed, as required by subpart F of this part, shall be marked with the port and date of inspection, and shall be signed by the inspecting officer in the U.S. Virgin Islands.

(3) A permit to proceed on Customs Form 7507 shall be presented for aircraft registered in a foreign country and proceeding carrying neither passengers nor cargo. The permit to proceed, as required under subpart F of this part, shall be marked with the port and date of inspection, and shall be signed by the inspecting officer in the U.S. Virgin Islands.

(4) A permit to proceed, or other document, shall be filed as required under subpart I of this part for an aircraft carrying residue cargo and/or passengers. The permit to proceed shall be marked with the port and date of inspection, and it must be signed by the inspecting officer in the U.S. Virgin Islands.

## 19 CFR Ch. I (4-1-05 Edition)

### Subpart O—Flights to and From Cuba

#### § 122.151 Definitions.

Under this subpart, the following definitions apply:

(a) *United States*. The term “U.S.” includes the several States, the District of Columbia, the U.S. Virgin Islands, and Puerto Rico.

(b) *Cuba*. The term “Cuba” does not include the Guantanamo Bay Naval Station.

#### § 122.152 Application.

This subpart applies to all aircraft entering or departing the U.S. to or from Cuba except public aircraft.

[T.D. 88-12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 97-82, 62 FR 51770, Oct. 3, 1997]

#### § 122.153 Limitations on airport of entry or departure.

The owner or person in command of any aircraft clearing the U.S. for, or entering the U.S. from, Cuba, whether the aircraft is departing on a temporary sojourn, or for export, must clear or obtain permission to depart from, or enter at, the Miami International Airport, Miami, Florida; the John F. Kennedy International Airport, Jamaica, New York; or the Los Angeles International Airport, Los Angeles, California, and comply with the requirements in this part unless otherwise authorized by the Assistant Commissioner, Office of Field Operations, Customs Headquarters.

[T.D. 99-71, 64 FR 53628, Oct. 4, 1999]

#### § 122.154 Notice of arrival.

(a) *Application*. All aircraft entering the U.S. from Cuba shall give advance notice of arrival.

(b) *Procedure for giving advance notice of arrival*. The commander of an aircraft covered by this section shall give the advance notice of arrival not less than one (1) hour before crossing the U.S. coast or border. Notice shall be given either:

(1) Through Federal Aviation Administration flight notification procedure (see International Flight Information Manual, Federal Aviation Administration); or

(2) Directly to the Customs officer in charge at the Miami International Airport, Miami, Florida; the John F. Kennedy International Airport, Jamaica, New York; or the Los Angeles International Airport, Los Angeles, California, whichever is applicable.

(c) *Contents of notice.* The advance notice of arrival shall state:

- (1) Type of aircraft and registration number;
- (2) Name of aircraft commander;
- (3) Number of U.S. citizen passengers;
- (4) Number of alien passengers;
- (5) Place of last foreign departure;
- (6) Estimated time and location of crossing the U.S. coast or border; and
- (7) Estimated time of arrival.

[T.D. 88-12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 99-71, 64 FR 53628, Oct. 4, 1999]

#### **§ 122.155 Document to be presented upon arrival.**

Upon arrival, the aircraft commander shall present:

(a) A manifest of all passengers on board, as required by the U.S. Immigration and Naturalization Service pursuant to 8 CFR 231.1(b), to an officer of the U.S. Immigration and Naturalization Service or to a Customs officer acting as an Immigration officer;

(b) The documents required by subpart E of this part.

#### **§ 122.156 Release of passengers.**

No passengers arriving from Cuba by aircraft will be released by Customs, nor will the aircraft be cleared or permitted to depart before the passengers are released by an officer of the Immigration and Naturalization Service or by a Customs officer acting on behalf of that agency.

#### **§ 122.157 Documents required for clearance.**

As a condition precedent to clearance, the aircraft commander shall present to Customs:

(a) The documents required by Subpart H of this part; and

(b) A validated license issued by the Department of Commerce, as provided for in 15 CFR 371.19 or a license issued by the Department of State, as provided in 22 CFR part 123.

#### **§ 122.158 Other entry and clearance requirements.**

All other provisions of this part relating to entry and clearance of aircraft are applicable to aircraft subject to this subpart.

### **Subpart P—Public Aircraft [Reserved]**

### **Subpart Q—Penalties**

#### **§ 122.161 In general.**

Except as provided in subpart S of this part, any person who violates any Customs requirements stated in this part, or any regulation that applies to aircraft under § 122.2, is, in addition to any other applicable penalty, subject to civil penalty of \$5,000 as provided by 19 U.S.C. 1644 and 1644a, except for overages, and failure to manifest narcotics or marihuana, in which cases the penalties set forth in section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584) apply, or for failure to report arrival or to present the documents required by § 122.27(c) of this part in which cases the penalties set forth in section 436, Tariff Act of 1930, as amended (19 U.S.C. 1436) apply, and any aircraft used in connection with any such violation shall be subject to seizure and forfeiture, as provided for in the Customs laws. A penalty or forfeiture may be mitigated under part 171 of this chapter.

[T.D. 91-61, 56 FR 32086, July 15, 1991, as amended by T.D. 98-74, 63 FR 51289, Sept. 25, 1998]

#### **§ 122.162 Failure to notify and explain differences in air cargo manifest.**

(a) *Application.* Penalties shall be assessed if differences in an air cargo manifest (overages or shortages) are discovered and:

- (1) The required notice and explanation are not made in time;
- (2) The port director is not satisfied that the differences were caused by clerical error or other mistake;
- (3) There has been a loss of revenue to the U.S.; or
- (4) The port director is not satisfied that there was a valid reason for delay in reporting any differences.

## § 122.163

(b) *Definition.* Under this section, “clerical error or other mistake” means a non-negligent, inadvertent, or typographical mistake in the preparation, assembly, or submission (electronically or otherwise) of the manifest.

(c) *Repeated differences.* If repeated differences are found in manifests filed by the same person, it may be determined that the differences were a result of negligence and not clerical error or other mistake.

(d) *Knowledge.* A penalty may be assessed for differences in a manifest that are unknown to the aircraft commander or owner.

[T.D. 88-12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 99-64, 64 FR 43266, Aug. 10, 1999]

## § 122.163 Transit air cargo traveling to U.S. ports.

(a) *Application.* If transit air cargo is traveling from the port of arrival to another U.S. port under § 122.119, a liability shall be assessed, as set out in § 18.8 of this chapter if there has been:

- (1) Shortage in delivery;
- (2) Irregular delivery; or
- (3) Non-delivery.

(b) *Liabilities assessed.* The liabilities assessed under this section are imposed as liquidated damages under a carrier’s bond.

(c) *Value of merchandise.* The port director shall determine the value of merchandise for assessment purposes based on the following factors:

- (1) Any data or documents available to the airline which presented a receipt for the transit air cargo, and available to the importing airline relating to the description and value of the cargo; and
- (2) Other information available to the port director relating to the same or similar merchandise. If the data or documents required by this section are not submitted within 90 days of the date requested, the port director shall determine value on the basis of other available information. The transit air cargo manifest does not reflect value.

## § 122.164 Transportation to another port for exportation.

If transit air cargo is traveling from the port of arrival to another U.S. port for later exportation, any liquidated

## 19 CFR Ch. I (4-1-05 Edition)

damages for shortages or irregular delivery shall be assessed as provided in § 122.163.

## § 122.165 Air cabotage.

(a) The air cabotage law (49 U.S.C. 41703) prohibits the transportation of persons, property, or mail for compensation or hire between points of the U.S. in a foreign civil aircraft. The term “foreign civil aircraft” includes all aircraft that are not of U.S. registration except those foreign-registered aircraft leased or chartered to a U.S. air carrier and operated under the authority of regulations issued by the Department of Transportation, as provided for in 14 CFR 121.153, and those aircraft used exclusively in the service of any government.

(b) Customs officers detecting possible violations shall report the matter to Headquarters, Attention: Entry Procedures and Carriers Branch. Liability should not be assessed under 49 U.S.C. Chapter 463 pending instructions from Headquarters since certain limited domestic transportation by foreign civil aircraft is permitted under regulations issued by the Department of Transportation.

[T.D. 88-12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 98-74, 63 FR 51289, Sept. 25, 1998; T.D. 99-27, 64 FR 13675, Mar. 22, 1999]

## § 122.166 Arrival, departure, discharge, and documentation.

(a) *Liability for civil penalties.* Except as otherwise provided, any aircraft pilot violation of the requirements of section 433, Tariff Act of 1930, as amended, (19 U.S.C. 1433), with respect to the following actions shall be liable for civil penalties as provided by section 436, Tariff Act of 1930, as amended (19 U.S.C. 1436), and described in paragraph (c) of this section:

- (1) Advance notification of arrival;
- (2) Report of arrival;
- (3) Landing of aircraft;
- (4) Presentation of documentation;
- (5) Departure from the port, place, or airport of arrival without authorization; or
- (6) Discharge of passenger, or merchandise (to include baggage) without authorization.

(b) *Liability for criminal penalties.* Upon conviction, any aircraft pilot violating any of the Customs requirements described in paragraph (a) of this section shall, in addition to civil penalties be subject to criminal penalties as set forth in section 436, Tariff Act of 1930, as amended, (19 U.S.C. 1436), and described in paragraph (c) of this section. If the aircraft has or is discovered to have had on board any merchandise (other than the equivalent, for a vessel, of sea stores) the importation of which into the U.S. is prohibited, that person shall be subject to an additional fine as set forth in 19 U.S.C. 1436 and described in paragraph (c) of this section.

(c) *Civil and criminal penalties described—*(1) *Civil penalty.* The pilot of any aircraft who fails to comply with the requirements of this section is liable for a civil penalty of \$5,000 for the first violation, and \$10,000 for each subsequent violation. Any aircraft used in connection with any such violation is subject to seizure and forfeiture.

(2) *Criminal penalty.* In addition to the civil penalty prescribed for violation of this section, the pilot of any aircraft who intentionally fails to comply with the requirements of this section is liable, upon conviction, for a fine of not more than \$2,000 or imprisonment for 1 year, or both. If the aircraft is found to have, or to have had, on board any merchandise the importation of which is prohibited, such individual is liable for an additional fine of not more than \$10,000 or imprisonment for not more than 5 years, or both.

(3) *Additional civil penalty.* If any merchandise, other than the equivalent of vessel sea stores, is imported or brought into the U.S. aboard an aircraft which has failed to comply with the requirements prescribed by this section, the pilot of the aircraft shall be liable for a civil penalty equal to the value of the merchandise, and the merchandise may be seized and forfeited, unless properly entered by the importer or consignee.

#### § 122.167 Aviation smuggling.

(a) *Civil penalties.* Any aircraft pilot who transports, or any person on board any aircraft who possesses prohibited or restricted merchandise knowing, or

intending, that the merchandise will be introduced into the U.S. contrary to law shall be subject to a civil penalty of twice the value of the merchandise involved, but not less than \$10,000, as prescribed in section 590, Tariff Act of 1930, as amended (19 U.S.C. 1590). Any aircraft used in connection with, or in aiding or facilitating, any violation of 19 U.S.C. 1590, whether or not any person is charged in connection with such violation, may be seized and forfeited in accordance with Customs laws.

(b) *Criminal penalties.* Any aircraft pilot or person who intentionally violates 19 U.S.C. 1590 is, upon conviction, subject to the criminal penalties of a fine of not more than \$10,000 or imprisonment for not more than 5 years, or both, if none of the merchandise involved is a controlled substance. More severe penalties are provided in 19 U.S.C. 1590 if the smuggled merchandise is a controlled substance. In such case, a violator is liable for a fine of not more than \$250,000 or imprisonment for not more than 20 years, or both.

(c) For purposes of imposing civil penalties under this section, any of the following acts, when performed within 250 miles of the territorial sea of the United States, shall be evidence that the transportation or possession of merchandise was unlawful and shall indicate that the purpose of the transfer was to make it possible for such merchandise, or any part of it, to be introduced into the U.S. unlawfully. For purposes of seizure and forfeiture, the following acts shall be evidence that an aircraft was used in connection with, or to aid or facilitate, a violation of this section;

(1) The operation of an aircraft without lights during such times as lights are required to be displayed under applicable law.

(2) The presence on an aircraft of an auxiliary fuel tank which is not installed in accordance with applicable law.

(3) The failure to correctly identify the aircraft by registration number and country of registration, when requested to do so by a customs officer or other government authority.

(4) The external display of false registration numbers or false country of registration.



(5) The presence on board of unmanifested merchandise, the importation of which is prohibited or restricted.

(6) The presence on board of controlled substances which are not manifested or which are not accompanied by the permits or licenses required under Single Convention on Narcotic Drugs or other international treaty.

(7) The presence of any compartment or equipment which is built or fitted out for smuggling.

### Subpart R—Air Carrier Smuggling Prevention Program

SOURCE: T.D. 91-25, 56 FR 12347, Mar. 25, 1991, unless otherwise noted.

#### § 122.171 Description of program.

The Air Carrier Smuggling Prevention Program (ACSPP) is designed to enlist the cooperation of the air carriers, as defined in 19 U.S.C. 1584 note, in Customs efforts to prevent the smuggling of controlled substances. If carriers develop and implement thorough and complete internal security procedures at ACSPP designated terminals and foreign departure and intermediate points, the opportunity for their conveyances being used for transportation of controlled substances will be greatly reduced. Participation in the program is voluntary, and may be limited to specific routes. Should a controlled substance be introduced into the United States on a conveyance owned or operated by a participating carrier however, the carrier will be exempt from seizure and penalties should it satisfy the provisions of § 122.175 of this part. The program will be operational for a period of 2 years from December 18, 1989, pursuant to 19 U.S.C. 1584 note.

#### § 122.172 Eligibility.

Any air carrier whose international flights arrive at, or depart from, any of the designated test airports, Miami International Airport, Dallas-Fort Worth International Airport, or Los Angeles International Airport, is eligible for participation in the ACSPP.

#### § 122.173 Application procedures.

(a) *Application.* An air carrier which wishes to participate in the ACSPP shall submit an application to the Assistant Commissioner, Office of Field Operations, in which it:

(1) Identifies specific routes and designated departure points and ACSPP airports for which application is made;

(2) Certifies that it has developed and will continue to maintain standard operating procedures (SOP) which are designed to safeguard the integrity of its employees, cargo and conveyances. The application shall be accompanied by three (3) copies of the SOP developed by the air carrier.

(b) *Approval criteria.* Upon receipt, each application will be reviewed to determine whether the procedures contained therein meet the requirements of the ACSPP. In determining whether a SOP submitted by an applicant carrier contains sufficient detail to assure the proper level of care and diligence required under the provisions of the ACSPP, the Assistant Commissioner, Office of Field Operations, will apply uniform standards and verify that, at a minimum, procedures are in place which:

(1) Assure positive security background checks are performed on all carrier employees, both those employed within the United States and without, who have access to baggage, cargo or secure areas on participating routes, to the extent permitted by law;

(2) Assure a system of positive baggage and cargo identification is employed at all terminals used by the carrier;

(3) Assure the carrier employs a system to assure that no unmanifested cargo is placed on board the conveyance or brought into the United States on any of their conveyances;

(4) Assure the carrier has specific procedures through which it will notify Customs should it discover any unmanifested or improperly manifested cargo on any of its conveyances or in any area subject to its control;

(5) Assure the carrier has an effective and practical employee awareness training program in place; and

(6) Assure thorough security measures are implemented at all foreign departure points on ACSPP participating

routes which will assure that the carrier has control and knowledge of the baggage, cargo, passenger and other materials placed on board its aircraft.

(c) *Acceptance and notification.* Upon verification by Customs that a carrier's SOP meets all the criteria outlined in § 122.173(b) of this part, the carrier will be notified that its application to the ACSPP has been accepted. Acceptance into the ACSPP is made with the understanding and expectation that the carrier will continue to act with the highest degree of care and diligence required under law and that it will abide by and perform all elements of its approved SOP.

[T.D. 91-25, 56 FR 12347, Mar. 25, 1991, as amended by T.D. 91-77, 56 FR 46115, Sept. 10, 1991]

#### § 122.174 Operational procedures.

(a) *Participating carriers.* Participating carriers are required to develop and adhere to procedures whereby they will:

(1) Provide security personnel for every international arrival participating in the ACSPP to conduct the following procedures:

(i) Perform a thorough internal and external search of the arriving aircraft;

(ii) Maintain total control of all passengers and cargo being discharged from the aircraft to either the Customs passenger hall or to the carrier's cargo facility;

(iii) Verify that all cargo on aircraft is properly manifested, marked and weighed and that piece counts are properly performed; and

(iv) Maintain physical security of the aircraft and ramp access to the aircraft while it is being offloaded.

(2) Provide security personnel at the foreign point of departure for every international departure which is participating in ACSPP to conduct the following procedures:

(i) Perform a thorough internal and external search of the departing aircraft;

(ii) Maintain total control of all passengers and cargo being loaded on the aircraft from either the passenger terminal or the carrier's cargo facility;

(iii) Verify that all cargo placed on the aircraft is properly manifested,

marked and weighed and that piece counts are properly performed;

(iv) Maintain physical security of the aircraft and ramp access to the aircraft while it is being loaded; and

(v) Maintain similar positive security measures at all foreign intermediate airports prior to the arrival of the aircraft at an ACSPP designated airport.

(b) *U.S. Customs.* U.S. Customs will:

(1) Retain all current options available regarding the search and inspection of any and all passengers, cargo and conveyances; and

(2) Provide training to carrier personnel to assist the development of proper operational procedures.

#### § 122.175 Exemption from penalties.

Should a controlled substance be introduced into the United States or discovered aboard an aircraft owned or operated by a participating carrier, or in cargo carried by a participating carrier, on a route identified by the carrier as one participating in the ACSPP and which has been approved by Customs, the participating air carrier shall be considered to have met the test of highest degree of care and diligence required under law, and shall not be subject to the penalty or seizure provisions of the Tariff Act of 1930, as amended, if the carrier establishes at an oral presentation before the port director or his designee, that the carrier was not grossly negligent nor engaged in willful misconduct, and that it had complied with all the provisions of these regulations.

#### § 122.176 Removal from ACSPP.

(a) *Grounds for removal from ACSPP.* The Assistant Commissioner, Office of Field Operations, may revoke or suspend the privilege of operating as a member of the ACSPP if:

(1) Acceptance into the program was gained through fraud or the misstatement of a material fact;

(2) The carrier refuses or neglects to obey any proper order of a Customs officer or any Customs order, rule, or regulation relative to its cooperation within the program;

(3) An officer of the carrier or corporation which has been accepted into the program is convicted of a felony or

## § 122.181

misdemeanor involving theft, smuggling, or other theft-connected crime which was committed in his or her official capacity as an officer of the carrier, or is convicted of any Customs-related crime;

(4) The carrier fails to retain merchandise which has been designated for examination;

(5) The carrier does not provide secure facilities or properly safeguard merchandise within its area of control; or

(6) The carrier fails to observe any of the procedures which it had set forth in the SOP which served as the basis for the carrier's acceptance into the program; and

(7) The carrier has been notified in writing that it has been found in non-compliance with a provision of the program and has failed to correct such noncompliance after having been given a reasonable opportunity to correct such noncompliance.

(b) *Notice and appeal.* The Assistant Commissioner, Office of Field Operations, shall suspend or remove participants from the ACSPP by serving notice of the proposed action upon the carrier in writing. The notice shall be in the form of a statement specifically setting forth the grounds for suspension or removal and shall provide the carrier with notice that it may file a written notice of appeal from suspension or revocation within 10 days following receipt of the notice of revocation or suspension. The notice of appeal shall be filed in duplicate to the office of the Assistant Commissioner, Field Operations, and shall set forth response of the carrier to the statement of the Assistant Commissioner.

(c) *Notice of decision.* The Assistant Commissioner, Office of Field Operations, shall notify the participating carrier in writing of the decision concerning continued participation in the program.

(d) *Use of uniform criteria.* When making any determination regarding a carrier's participation or continuation in the ACSPP, the Assistant Commissioner, Office of Field Operations, shall

## 19 CFR Ch. I (4-1-05 Edition)

employ a uniform standard of performance and evaluation.

[T.D. 91-25, 56 FR 12347, Mar. 25, 1991, as amended by T.D. 91-77, 56 FR 46115, Sept. 10, 1991; T.D. 99-27, 64 FR 13675, Mar. 22, 1999]

### Subpart S—Access to Customs Security Areas

SOURCE: T.D. 90-82, 55 FR 42557, Oct. 22, 1990, unless otherwise noted.

#### § 122.181 Definition of Customs security area.

For purposes of this section, the term "Customs security area" means the Federal inspection services area at any airport accommodating international air commerce designated for processing passengers, crew, their baggage and effects arriving from, or departing to, foreign countries, as well as the aircraft deplaning and ramp area and other restricted areas designated by the port director. These areas will be posted as restricted to the extent possible and are established for the purpose of prohibiting unauthorized entries or contact with persons or objects.

[T.D. 90-82, 55 FR 42557, Oct. 22, 1990, as amended by T.D. 02-40, 67 FR 48984, July 29, 2002]

#### § 122.182 Security provisions.

(a) *Customs access seal required.* With the exception of all Federal and uniformed State and local law enforcement personnel and aircraft passengers and crew, all persons located at, operating out of, or employed by any airport accommodating international air commerce or its tenants or contractors, including air carriers, who have unescorted access to the Customs security area, must openly display or produce upon demand an approved access seal issued by Customs. The approved Customs access seal must be in the possession of the person in whose name it is issued whenever the person is in the Customs security area and must be used only in furtherance of that person's employment in accordance with the description of duties submitted by the employer under paragraph (c)(1) of this section. The Customs access seal remains the property

of Customs, and any bearer must immediately surrender it as provided in paragraph (g) of this section or upon demand by any authorized Customs officer for any cause referred to in § 122.187(a). Unless surrendered pursuant to paragraph (g) of this section or § 122.187, each approved Customs access seal issued under paragraph (c)(1) of this section will remain valid for 2 years from January 1, 2002, in the case of a Customs access seal issued prior to that date and for 2 years from the date of issuance in all other cases. Retention of an approved Customs access seal beyond the applicable 2-year period will be subject to the reapplication provisions of paragraph (c)(2) of this section.

(b) *Employers responsibility.* Employers operating in Customs airport security areas shall advise all employees of the provisions of the Customs regulations relative to those areas, require employees to familiarize themselves with those provisions and insure employee compliance. The employer shall also advise the port director of any changes of employment pursuant to § 122.182(g).

(c) *Application requirements—(1) Initial application.* An application for an approved Customs access seal, as required by this section, must be filed by the applicant with the port director on Customs Form 3078 and must be supported by a written request and justification for issuance prepared by the applicant's employer that describes the duties that the applicant will perform while in the Customs security area. The application requirement applies to all employees required to display an approved Customs access seal by this section, regardless of the length of their employment. The application must be supported by the bond of the applicant's employer or principal on Customs Form 301 containing the bond conditions set forth in § 113.62, § 113.63, or § 113.64 of this chapter, relating to importers or brokers, custodians of bonded merchandise, or international carriers. If the applicant's employer is not the principal on a Customs bond on Customs Form 301 for one or more of the activities to which the bond conditions set forth in § 113.62, § 113.63, or § 113.64 relate, the application must be

supported by an Airport Customs Security Area Bond, as set forth in appendix A of part 113 of this chapter. The latter bond may be waived, however, for State or local government-related agencies in the discretion of the port director. Waiver of this bond does not relieve the agency in question or its employees from compliance with all other provisions of this subpart. In addition, in connection with an application for an approved Customs access seal under this section:

(i) The port director may require the applicant to submit fingerprints on form FD-258 or on any other approved medium either at the time of, or following, the filing of the application. If required, the port director will inform the applicant of the current Federal Bureau of Investigation user fee for conducting fingerprint checks and the Customs administrative processing fee, the total of which must be tendered by, or on behalf of, the applicant with the application; and

(ii) Proof of citizenship or authorized residency and a photograph may also be required.

(2) *Reapplication.* If a person wishes to retain an approved Customs access seal for one or more additional 2-year periods beyond the 2-year period referred to in paragraph (a) of this section, that person must submit a new application no later than 30 calendar days prior to the start of each additional period. The new application must be filed in the manner specified in paragraph (c)(1) of this section for an initial application, and the port director may also require the submission of fingerprints as provided in paragraph (c)(1)(i) of this section. The new application will be subject to review on a de novo basis as if it were an initial application except that the written attestation referred to in paragraph (d) of this section will not be required if there has been no change in the employment of the applicant since the last attestation was submitted to Customs.

(d) *Background check.* An authorized official of the employer must attest in writing that a background check has been conducted on the applicant, to the

## § 122.183

extent allowable by law. The background check must include, at a minimum, references and employment history, to the extent necessary to verify representations made by the applicant relating to employment in the preceding 5 years. The authorized official of the employer must attest that, to the best of his knowledge, the applicant meets the conditions necessary to perform functions associated with employment in the Customs security area. Additionally, the application may be investigated by Customs and a report prepared concerning the character of the applicant. Records of background investigations conducted by employers must be retained for a period of one year following cessation of employment and made available upon request of the port director.

(e) *Law Enforcement officers and other governmental officials.* Law enforcement officers and other Federal, State, or local officials whose official duties require access to the Customs security area may request from the port director the issuance of an approved Customs access seal. They need not make application nor submit to background checks for security area access. An Airport Customs Security Area Bond is not required.

(f) *Replacement access seal.* A new Customs access seal may be obtained from the port director in the following circumstances, without the completion of an additional application, except as determined by the port director in his discretion:

(1) A change in employee name or address;

(2) A change in the name or ownership of the employing company;

(3) A change in employer or airport authority identification card format; or

(4) Loss or theft of the Customs access seal (see §122.185 of this part).

(g) *Surrender of access seal.* Where the employee no longer requires access to the Customs security area for an extended period of time at the airport of issuance due to a change in duties, termination of employment, or other reason, or where the 2-year period referred to in paragraph (a) of this section expires and a new application under paragraph (c)(2) of this section has not been

## 19 CFR Ch. I (4–1–05 Edition)

approved, the employer shall notify the port director in writing, at the time of such change, and shall return the Customs access seal to Customs. The notification shall include information regarding the disposition of the approved Customs access seal of the employee.

[T.D. 90–82, 55 FR 42557, Oct. 22, 1990, as amended by T.D. 93–18, 58 FR 15773, Mar. 24, 1993; T.D. 02–40, 67 FR 48984, July 29, 2002; 67 FR 51928, Aug. 9, 2002]

### § 122.183 Denial of access.

(a) *Grounds for denial.* Access to the Customs security area will not be granted, and therefore an approved Customs access seal will not be issued, to any person whose access to the Customs security area will, in the judgment of the port director, endanger the revenue or the security of the area or pose an unacceptable risk to public health, interest or safety, national security, or aviation safety. Specific grounds for denial of access to the Customs security area include, but are not limited to, the following:

(1) Any cause which would justify a demand for surrender of a Customs access seal or the revocation or suspension of access under §122.182(g) or §122.187;

(2) Evidence of a pending or past investigation establishing probable cause to believe that the applicant has engaged in any conduct which relates to, or which could lead to a conviction for, a disqualifying offense listed under paragraph (a)(4) of this section;

(3) The arrest of the applicant for, or the charging of the applicant with, a disqualifying offense listed under paragraph (a)(4) of this section on which prosecution or other disposition is pending;

(4) A disqualifying offense committed by the applicant. For purposes of this paragraph, an applicant commits a disqualifying offense if the applicant has been convicted of, or found not guilty of by reason of insanity, or has committed any act or omission involving, any of the following in any jurisdiction during the 5-year period, or any longer period that the port director deems appropriate for the offense in question, prior to the date of the application submitted under §122.182 or at any time

while in possession of an approved Customs access seal:

- (i) Forgery of certificates, false marking of aircraft, and other aircraft registration violation (49 U.S.C. 46306);
- (ii) Interference with air navigation (49 U.S.C. 46308);
- (iii) Improper transportation of a hazardous material (49 U.S.C. 46312);
- (iv) Aircraft piracy in the special aircraft jurisdiction of the United States (49 U.S.C. 46502(a));
- (v) Interference with flight crew members or flight attendants (49 U.S.C. 46504);
- (vi) Commission of certain crimes aboard aircraft in flight (49 U.S.C. 46506);
- (vii) Carrying a weapon or explosive aboard aircraft (49 U.S.C. 46505);
- (viii) Conveying false information and threats (49 U.S.C. 46507);
- (ix) Aircraft piracy outside the special aircraft jurisdiction of the United States (49 U.S.C. 46502(b));
- (x) Lighting violations involving transportation of controlled substances (49 U.S.C. 46315);
- (xi) Unlawful entry into an aircraft or airport area that serves air carriers or foreign air carriers contrary to established security requirements (49 U.S.C. 46314);
- (xii) Destruction of an aircraft or aircraft facility (18 U.S.C. 32);
- (xiii) Murder;
- (xiv) Assault with intent to murder;
- (xv) Espionage;
- (xvi) Sedition;
- (xvii) Kidnapping or hostage taking;
- (xviii) Treason;
- (xix) Rape or aggravated sexual abuse;
- (xx) Unlawful possession, use, sale, distribution, or manufacture of an explosive or weapon;
- (xxi) Extortion;
- (xxii) Armed or felony unarmed robbery;
- (xxiii) Distribution of, or intent to distribute, a controlled substance;
- (xxiv) Felony arson;
- (xxv) Felony involving:
  - (A) A threat;
  - (B) Willful destruction of property;
  - (C) Importation or manufacture of a controlled substance;
  - (D) Burglary;
  - (E) Theft;

(F) Dishonesty, fraud, or misrepresentation;

(G) Possession or distribution of stolen property;

(H) Aggravated assault;

(I) Bribery; or

(J) Illegal possession of a controlled substance punishable by a maximum term of imprisonment of more than one year;

(xxvi) Violence at an airport serving international civil aviation (18 U.S.C. 37);

(xxvii) Embezzlement;

(xxviii) Perjury;

(xxix) Robbery;

(xxx) Crimes associated with terrorist activities;

(xxxi) Sabotage;

(xxxii) Assault with a deadly weapon;

(xxxiii) Illegal use or possession of firearms or explosives;

(xxxiv) Any violation of a U.S. immigration law;

(xxxv) Any violation of a Customs law or any other law administered or enforced by Customs involving narcotics or controlled substances, commercial fraud, currency or financial transactions, smuggling, failure to report, or failure to declare;

(xxxvi) Airport security violations; or

(xxxvii) Conspiracy or attempt to commit any of the offenses or acts referred to in paragraphs (a)(4)(i) through (a)(4)(xxxv) of this section;

(5) Denial or suspension of the applicant's unescorted access authority to a Security Identification Display Area (SIDA) pursuant to regulations promulgated by the U.S. Federal Aviation Administration or other appropriate government agency; or

(6) Inability of the applicant's employer or Customs to complete a meaningful background check or investigation of the applicant.

(b) *Notification of denial.* The port director shall give written notification to any person whose application for access to the Customs security area has been denied, fully stating the reasons for denial and setting forth specific appeal procedures. The employer shall be notified in writing that the applicant has been denied access to the area and that the detailed reasons for the denial have been furnished to the applicant.

Detailed reasons regarding the denial, however, shall not be furnished to the employer by Customs.

(c) *Appeal of denial.* The denial will be final unless the applicant files with the port director a written notice of appeal within 10 days following receipt of the notice of denial. The notice of appeal shall be filed in duplicate and shall set forth the response of the applicant to the statement of the port director. The port director will render his decision on the appeal to the applicant in writing within 30 calendar days of receipt of the notice of appeal and, if the application is denied on appeal, the decision will advise the applicant of the procedures for filing a further appeal pursuant to paragraph (d) of this section.

(d) *Further appeal of denial.* Where the application on appeal is denied by the port director, the applicant may file a further written notice of appeal with the director of field operations at the Customs Management Center having jurisdiction over the office of the port director within 10 calendar days of receipt of the port director's decision on the appeal. The further notice of appeal must be filed in duplicate and must set forth the response of the applicant to the decision of the port director. The director of field operations will review the appeal and render a written decision. The final decision will be transmitted to the port director and served by him on the applicant.

[T.D. 90-82, 55 FR 42557, Oct. 22, 1990, as amended by T.D. 02-40, 67 FR 48985, July 29, 2002]

**§ 122.184 Change of identification; change in circumstances of employee; additional employer responsibilities.**

(a) *Change of identification.* The Customs access seal may be removed from the employee by the port director where, for security reasons, a change in the nature of the identification card or other medium on which it appears is necessary.

(b) *Change in circumstances of employee.* If, after issuance of a Customs access seal to an employee, any circumstance arises (for example, an arrest or conviction for a disqualifying offense) that constitutes a ground for denial of access to the Customs secu-

rity area under § 122.183(a) or for revocation or suspension of access to the Customs security area and surrender of the Customs access seal under § 122.187(a), the employee must within 24 hours advise the port director in writing of that change in circumstance. In the case of an arrest or prosecution for a disqualifying offense listed in § 122.183(a)(4), the employee also must within 5 calendar days advise the port director in writing of the final disposition of that arrest or prosecution. In addition, if an airport operator or an aircraft operator suspends an employee's unescorted access authority to a Security Identification Display Area pursuant to regulations promulgated by the U.S. Federal Aviation Administration or other appropriate government agency and the employee also has an approved Customs access seal, the employee must within 24 hours advise the port director in writing of the fact of, and basis for, the suspension.

(c) *Additional employer responsibilities.* If an employer becomes aware of any change in the circumstances of its employee as described in paragraph (b) of this section, the employer must immediately advise the port director of that fact even though the employee may have separately reported that fact to the port director under paragraph (b) of this section. In addition, each employer must submit to the port director during the first month of each calendar quarter a report setting forth a current list of all its employees who have an approved Customs access seal. The quarterly report must list separately all additions to, and deletions from, the previous quarterly report. Moreover, each employer must take appropriate steps to ensure that an employee uses an approved Customs access seal only in connection with activities relating to his employment.

[T.D. 02-40, 67 FR 48986, July 29, 2002; 67 FR 51928, Aug. 9, 2002]

**§ 122.185 Report of loss or theft of Customs access seal.**

The loss or theft of an approved Customs access seal must be promptly reported in writing by the employee to the port director. The Customs access

seal may be replaced, as provided in § 122.182(f).

[T.D. 02-40, 67 FR 48986, July 29, 2002]

**§ 122.186 Presentation of Customs access seal by other person.**

If an approved Customs access seal is presented by a person other than the one to whom it was issued, the Customs access seal will be removed and destroyed. An approved Customs access seal may be removed from an employee by any Customs officer designated by the port director.

[T.D. 02-40, 67 FR 48986, July 29, 2002]

**§ 122.187 Revocation or suspension of access.**

(a) *Grounds for revocation or suspension of access*—(1) *General*. The port director:

(i) Must immediately revoke or suspend an employee's access to the Customs security area and demand the immediate surrender of the employee's approved Customs access seal for any ground specified in paragraph (a)(2) of this section; or

(ii) May propose the revocation or suspension of an employee's access to the Customs security area and the surrender of the employee's approved Customs access seal whenever, in the judgment of the port director, it appears for any ground not specified in paragraph (a)(2) of this section that continued access might pose an unacceptable risk to public health, interest or safety, national security, aviation safety, the revenue, or the security of the area. In this case the port director will provide the employee with an opportunity to respond to the notice of proposed action.

(2) *Specific grounds*. Access to the Customs security area will be revoked or suspended, and surrender of an approved Customs access seal will be demanded, in any of the following circumstances:

(i) There is probable cause to believe that an approved Customs access seal was obtained through fraud, a material omission, or the misstatement of a material fact;

(ii) The employee is or has been convicted of, or found not guilty of by reason of insanity, or there is probable

cause to believe that the employee has committed any act or omission involving, an offense listed in § 122.183(a)(4);

(iii) The employee has been arrested for, or charged with, an offense listed in § 122.183(a)(4) and prosecution or other disposition of the arrest or charge is pending;

(iv) The employee has engaged in any other conduct that would constitute a ground for denial of access to the Customs security area under § 122.183;

(v) The employee permits the approved Customs access seal to be used by any other person or refuses to openly display or produce it upon the proper demand of a Customs officer;

(vi) The employee uses the approved Customs access seal in connection with a matter not related to his employment or not constituting a duty described in the written justification required by § 122.182(c)(1);

(vii) The employee refuses or neglects to obey any proper order of a Customs officer, or any Customs order, rule, or regulation;

(viii) For all employees of the bond holder, if the bond required by § 122.182(c) is determined to be insufficient in amount or lacking sufficient sureties, and a satisfactory new bond with good and sufficient sureties is not furnished within a reasonable time;

(ix) The employee no longer requires access to the Customs security area for an extended period of time at the airport of issuance because of a change in duties, termination of employment, or other reason; or

(x) The employee or employer fails to provide the notification of a change in circumstances as required under § 122.184(b) or (c) or the employee fails to report the loss or theft of a Customs access seal as required under § 122.185.

(b) *Notice of revocation or suspension*. The port director will revoke or suspend access to the Customs security area and demand surrender of the Customs access seal by giving notice of the revocation or suspension and demand in writing to the employee, with a copy of the notice to the employer. The notice will indicate whether the revocation or suspension is effective immediately or is proposed.

(1) *Immediate revocation or suspension*. When the revocation or suspension of



access and the surrender of the Customs access seal are effective immediately, the port director will issue a final notice of revocation or suspension. The port director or his designee may deny physical access to the Customs security area and may demand surrender of an approved Customs access seal at any time on an emergency basis prior to issuance of a final notice of revocation or suspension whenever in the judgment of the port director or his designee an emergency situation involving public health, safety, or security is involved and, in such a case, a final notice of revocation or suspension will be issued to the affected employee within 10 calendar days of the emergency action. A final notice of revocation or suspension will state the specific grounds for the immediate revocation or suspension, direct the employee to immediately surrender the Customs access seal if that Customs access seal has not already been surrendered, and advise the employee that he may choose to pursue one of the following two options:

(i) Submit a new application for an approved Customs access seal, in accordance with the provisions of § 122.182(c), on or after the 180th calendar day following the date of the final notice of revocation or suspension; or

(ii) File a written administrative appeal of the final notice of revocation or suspension with the port director in accordance with paragraph (c) of this section within 30 calendar days of the date of the final notice of revocation or suspension. The appeal may request that a hearing be held in accordance with paragraph (d) of this section, and in that case the appeal also must demonstrate that there is a genuine issue of fact that is material to the revocation or suspension action.

(2) *Proposed revocation or suspension—*  
(i) *Issuance of notice.* When the revocation or suspension of access and the surrender of the Customs access seal is proposed, the port director will issue a notice of proposed revocation or suspension. The notice of proposed revocation or suspension will state the specific grounds for the proposed action, inform the employee that he may continue to have access to the Customs se-

curity area and may retain the Customs access seal pending issuance of a final notice under paragraph (b)(2)(ii) of this section, and advise the employee that he may file with the port director a written response addressing the grounds for the proposed action within 10 calendar days of the date the notice of proposed action was received by the employee. The employee may respond by accepting responsibility, explaining extenuating circumstances, and/or providing rebuttal evidence. The employee also may ask for a meeting with the port director or his designee to discuss the proposed action.

(ii) *Final notice—*(A) *Based on non-response.* If the employee does not respond to the notice of proposed action, the port director will issue a final notice of revocation or suspension within 30 calendar days of the date the notice of proposed action was received by the employee. The final notice of revocation or suspension will state the specific grounds for the revocation or suspension, direct the employee to immediately surrender the Customs access seal, and advise the employee that he may choose to pursue one of the two options specified in paragraphs (b)(1)(i) and (ii) of this section.

(B) *Based on response.* If the employee files a timely response, the port director will issue a final determination regarding the status of the employee's right of access to the Customs security area within 30 calendar days of the date the employee's response was received by the port director. If this final determination is adverse to the employee, then the final notice of revocation or suspension will state the specific grounds for the revocation or suspension, direct the employee to immediately surrender the Customs access seal, and advise the employee that he may choose to pursue one of the two options specified in paragraphs (b)(1)(i) and (ii) of this section.

(c) *Appeal procedures—*(1) *Filing of appeal.* The employee may file a written appeal of the final notice of revocation or suspension with the port director within 10 calendar days following receipt of the final notice of revocation or suspension. The appeal must be filed

in duplicate and must set forth the response of the employee to the statement of the port director. The port director may, in his discretion, allow the employee additional time to submit documentation or other information in support of the appeal.

(2) *Action by port director*—(i) *If a hearing is requested.* If the appeal requests that a hearing be held, the port director will first review the appeal to determine whether there is a genuine issue of fact that is material to the revocation or suspension action. If a hearing is required because the port director finds that there is a genuine issue of fact that is material to the revocation or suspension action, a hearing will be held, and a decision on the appeal will be rendered, in accordance with paragraphs (d) through (f) of this section. If the port director finds that there is no genuine issue of fact that is material to the revocation or suspension action, no hearing will be held and the port director will forward the administrative record as provided in paragraph (c)(2)(ii) of this section for the rendering of a decision on the appeal under paragraph (c)(3) of this section.

(ii) *CMC review.* If no hearing is requested or if the port director finds that a requested hearing is not required, following receipt of the appeal the port director will forward the administrative record to the director of field operations at the Customs Management Center having jurisdiction over the office of the port director for a decision on the appeal. The transmittal of the port director must include a response to any disputed issues raised in the appeal.

(3) *Action by the director.* Following receipt of the administrative record from the port director, the director of field operations will render a written decision on the appeal based on the record forwarded by the port director. The decision will be rendered within 30 calendar days of receipt of the record and will be transmitted to the port director and served by the port director on the employee. A decision on an appeal rendered under this paragraph will constitute the final administrative action on the matter.

(d) *Hearing.* A hearing will be conducted in connection with an appeal of a final notice of revocation or suspension of access to the Customs security area only if the affected employee in writing requests a hearing and demonstrates that there is a genuine issue of fact that is material to the revocation or suspension action. If a hearing is required, it must be held before a hearing officer designated by the Commissioner, or his designee. The employee will be notified of the time and place of the hearing at least 5 calendar days before the hearing. The employee may be represented by counsel at the revocation or suspension hearing. All evidence and testimony of witnesses in the proceeding, including substantiation of charges and the answer to the charges, must be presented. Both parties will have the right of cross-examination. A stenographic record of the proceedings will be made upon request and a copy furnished to the employee. At the conclusion of the proceedings or review of a written appeal, the hearing officer must promptly transmit all papers and the stenographic record to the director of field operations, together with the recommendation for final action. If neither the employee nor his attorney appears for a scheduled hearing, the hearing officer must record that fact, accept any appropriate testimony, and conclude the hearing. The hearing officer must promptly transmit all papers, together with his recommendations, to the director of field operations.

(e) *Additional written views.* Within 10 calendar days after delivery of a copy of the stenographic record of the hearing to the director of field operations, either party may submit to the director of field operations additional written views and arguments on matters in the record. A copy of any submission will be provided to the other party. Within 10 calendar days of receipt of the copy of the submission, the other party may file a reply with the director of field operations, and a copy of the reply will be provided to the other party. No further submissions will be accepted.

## § 122.188

## 19 CFR Ch. I (4–1–05 Edition)

(f) *Decision.* After consideration of the recommendation of the hearing officer and any additional written submissions and replies made under paragraph (e) of this section, the director of field operations will render a written decision. The decision will be transmitted to the port director and served by the port director on the employee. A decision on an appeal rendered under this paragraph will constitute the final administrative action on the matter.

[T.D. 02–40, 67 FR 48986, July 29, 2002; 67 FR 51928, Aug. 9, 2002; 67 FR 54023, Aug. 20, 2002]

### § 122.188 Issuance of temporary Customs access seal.

(a) *Conditions for issuance.* When an approved Customs access seal is required under § 122.182(a) of this part and the port director determines that the application cannot be administratively processed in a reasonable period of time, an employer may, upon written request, be issued a temporary Customs access seal for his employee. The employer must satisfy the port director that a hardship would result if the request is not granted. Surety on the bond, as required by § 122.182(c), may be waived in the discretion of the port director but only for the period of the temporary Customs access seal and its renewal period.

(b) *Validation period.* The temporary Customs access seal shall be valid for a period of 60 days. The port director may renew the temporary Customs access seal for additional 30 day periods where the circumstances under which the temporary Customs access seal was originally issued continue to exist. The temporary Customs access seal shall be destroyed by the port director when the permanent approved Customs access seal is issued, or the privileges granted thereby are withdrawn.

(c) *Temporary employees and official visitors.* The provisions of this section shall also apply to temporary employees and official visitors requiring access to the Customs security area. In the case of temporary employees, the Customs access seal shall be valid for a period of 30 days. In the case of official visitors, the temporary Customs access seal shall be valid for the day of issuance only. Temporary employee and official visitor Customs access seal

are renewable for periods equal to their original period of validity.

(d) *Revocation of denial and access.* The temporary Customs access seal may be revoked and access to the Customs security area denied at any time if the holder of the temporary Customs access seal refuses or neglects to obey any proper order of a Customs officer, or any Customs order, rule, or regulation, or if, in the judgment of the port director, continuation of the privileges granted thereby would endanger the revenue or pose a threat to the Customs security area.

[T.D. 90–82, 55 FR 42557, Oct. 22, 1990, as amended by T.D. 02–40, 67 FR 48988, July 29, 2002]

### § 122.189 Bond liability.

Any failure on the part of a principal to comply with the conditions of the bond required under § 122.182(c), including a failure of an employer to comply with any requirement applicable to the employer under this subpart, will constitute a breach of the bond and may result in a claim for liquidated damages under the bond.

[T.D. 02–40, 67 FR 48988, July 29, 2002]

## PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

Sec.

123.0 Scope.

### Subpart A—General Provisions

123.1 Report of arrival from Canada or Mexico and permission to proceed.

123.2 Penalty for failure to report arrival or for proceeding without a permit.

123.3 Inward foreign manifest required.

123.4 Inward foreign manifest forms to be used.

123.5 Certification and filing of inward foreign manifest.

123.6 Train sheet for arriving railroad trains.

123.7 Manifest used as an entry for unconditionally free merchandise valued not over \$250.

123.8 Permit or special license to unlade or lade a vessel or vehicle.

123.9 Explanation of a discrepancy in a manifest.

123.10 General order merchandise.

### Subpart B—International Traffic

123.11 Supplies on international trains.